

THE GUARANTEE OF THE RIGHT OF A PERSON AGGRIEVED BY A PUBLIC AUTHORITY IN ROMANIA - SELECTIVE ADMINISTRATIVE ASPECTS

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Abstract

The present study aims to analyse the selective administrative aspects regarding the granting of the right of a person aggrieved by a public authority in Romania. The right of a person – natural person or juridical entity – aggrieved by a public authority in Romania is regulated by the Article 52 of the Constitution of Romania. Therefore, this fundamental right which guarantees also the right of the players in economy, being granted at the Constitutional level, ensures a good administration of the rule of law and grants a safety of the economic and business climate in Romania. It is granted the fundamental right of a person aggrieved through an administrative deed or through a request which was not settled within the legal time limit and, at the same time, by granting to that person a right to approach the competent authorities and to be entitled to obtain the recognition of the claimed right or of the legitimate interest, with the annulment of the deed and the repair of prejudice, respectively. The liability of the Romanian State for miscarriage of justice, as well as its right of recourse against the magistrates who acted in bad faith or serious neglect in their position are also granted. The methods used in drawing up this study are: the comparative method, the historical method, the logical method, the sociological method and the quantitative method. The results of this research have highlighted the juridical, constitutional and administrative ways of defence for the natural person or juridical entity – aggrieved by a public authority in Romania.

Keywords: *the right of a person aggrieved by a public authority in Romania, good administration, Romanian Constitution, economic and business climate in Romania, rule of law.*

JEL Classification: K23

1. Introductory aspects

The fundamental right analyzed in this paper, which guarantees the rights of the economic actors, being guaranteed at the constitutional level, ensures a good administration of the rule of law and confers a certainty on the economic and business climate in Romania.

The researched scientific issue consisted in presenting the administrative selective aspects regarding the guarantee of the right of the person injured by a public authority in Romania.

The novelty of this research consisted in presenting the administrative selective aspects regarding the guarantee of the right of the person injured by a public authority in Romania. The novelty elements could be found in the way the author approaches the subject, as well as in the presentation of selective aspects regarding this fundamental right, as well as in the conclusions and recommendations made by the author.

This study presents the analysis of its component parts: administrative damage, patrimonial liability of the state for damages caused by legal errors, as well as the author's conclusions and *legerenda* proposals, bibliography.

The methods used in the elaboration of this study are: comparative method, historical method, logical method, sociological method and quantitative method.

The results obtained from this study revealed the constitutional and administrative legal means available to natural and legal persons to defend their legitimate interests if they were injured by a public institution in Romania.

2. Injury by administrative act

The constitutional regulation on the right of a person injured by a public authority in Romania refers to all administrative acts issued by public authorities, the constitutional legal force of which is not limited to acts issued by executive authorities. It does not apply to the laws issued by the

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Parliament of Romania, but it applies to administrative acts issued by the Romanian Parliament. Regulation is not applicable to court rulings but applies to administrative acts issued by courts, prosecutors or other state structures.

The right of the person injured by a public authority was guaranteed by art. 52 of the Constitution of Romania, which in turn provided for the injured person to obtain either the recognition of the claimed right or the legitimate interest, or the annulment of the act and the reparation of the damage. The injured party can achieve his/her rights by exercising the right of free access to justice, under art. 21 of the Constitution of Romania.

Regarding the conditions and limits of exercising the right of the injured person in his right or in a legitimate interest in turning against public authority, the constitutional text refers to the organic law, according to art. 52 paragraph (2).

The Romanian Parliament is the only authority in Romania that is competent to pass laws. Thus, the Constitutional Court of Romania also observed: "*the Constitutional Court has stated that the provisions of art. 61 par. (1) the second sentence of the Constitution gives Parliament the status of the single legislative authority of the country and, by virtue of this legislative monopoly, Parliament is the only public authority that adopts laws.*"²

At the same time, the Romanian Government has the power to adopt ordinances and the only institution empowered to carry out the constitutional control of the laws is the Constitutional Court of Romania: "*The Constitutional Court has the sole power to control the legality/constitutionality of the simple or urgent ordinances of Government (both in terms of the adoption procedure and the normative content), no other public authority having the material competence in this area. As regards the assessment of the urgency of adopting an emergency ordinance, the Court finds that it is an exclusive attribute of the delegated legislator, which can be censored only under the conditions expressly provided for by the Constitution, that is, only by means of parliamentary control exercised art. 115 par. (5) of the Constitution. Finally, the Court notes that, in a rule of law governed by the principle of separation of powers, ministers are held accountable for their political decisions by political means, and not by means of criminal law*"³.

Regarding the provisions of the decision of the Constitutional Court of Romania and the Romanian administrative doctrine, regarding the public authorities competent to issue administrative acts, we must "*distinguish between the public administration, carried out by the state structures, respectively of the local communities led, or, after directly or indirectly, by one of the two chiefs of the executive - the head of the State and the Government - and the administrative activity carried out by the other state bodies (public authorities): Parliament, courts, Constitutional Court, People's Advocate. First, (...) evokes an administrative fact that has a political origin, which is why I called it a political-state administrative fact, the second one evokes an administrative fact that mediates the realization of competence, ie an administrative activity that escapes general government or, as the case may be, that exercised by the President of Romania*"⁴.

To the extent that a public authority does not respond to a petition/requests addressed to it, does not respond or responds late, then the injured person has the opportunity to appeal to the administrative court.

The administrative doctrine stated that "*before appealing to the competent administrative litigation court, a person who considers himself or herself to be in a right or a legitimate interest by an individual administrative act must request the issuing public authority or hierarchical authority superior, if any, within 30 days of the date of communication of the act, the revocation in whole or in part thereof*"⁵.

² Decision of the Constitutional Court of Romania no. 68 of 27.02.2017 on the request for settlement of the legal conflict of a constitutional nature between the Government of Romania and the Public Ministry - the Prosecutor's Office attached to the High Court of Cassation and Justice - National Anticorruption Directorate, request made by the President of the Senate, published in the Official Gazette of Romania no. 181 of 14 March 2017.

³ *Idem*.

⁴ A. Iorgovan, *Tratat de drept administrativ*, Vol I, 4th ed., All Beck Publishing House, Bucharest, 2005, p. 67.

⁵ C. S. Săraru, *Drept Administrativ. Probleme fundamentale ale dreptului public*, C.H. Beck Publishing House, Bucharest, 2016, p.482.

According to another author of the administrative doctrine, "Article 52 is therefore the constitutional basis of the defense of citizens against the abuses of public authorities, implicitly of their responsibility for the repair of damages caused to citizens. More specifically, art. 52 is the constitutional basis for the reparation of damages caused to citizens by regulating the three situations in which the liability of a public authority may occur: a) when it has issued an administrative act that damages a person's right or legitimate interest; b) when a person's application is not solved within the legal term, and c) when legal errors have occurred"⁶.

Article 52 of the Romanian Constitution was the basis for the drafting of the legislation in the administrative field in Romania, respectively of the Law on administrative contentious no. 554/2004⁷. According to art. 7 "(1) Before appealing to the competent administrative litigation court, the person who considers himself/herself to be injured in his/her right or in a legitimate interest by means of an individual administrative act shall request the issuing public authority or the higher authority, if this exists, within 30 days of the date of communication of the act, the revocation in whole or in part thereof".

Law of administrative contentious no. 554/2004 of Romania, excludes the possibility of attacking certain types of administrative acts, namely "(1) The administrative acts of the public authorities concerning their relations with the Parliament can not be appealed against in the administrative litigation; (b) Military headquarters acts. (2) No administrative proceedings may be brought against the administrative litigation, the administrative acts for the modification or abolition of which, by an organic law, are provided by another judicial procedure. (3) The administrative acts issued for the application of the status of war, state of emergency or emergency, those concerning the national defense and security or those issued for the restoration of public order, as well as for the elimination of the consequences of natural calamities, epidemics and epizootics may be attacked only for excess power"⁸.

Article 52 of the Romanian Constitution, paragraph 2 refers to the organic law: "The conditions and limits of the exercise of this right are established by organic law." In the doctrine⁹, it was stated that "The limits to which art. 52 par. (2) are even the administrative acts exempt from the administrative contentious control, known in classical doctrine as the "non-receiving fine". From the content of art. 52 paragraph (2) of the Constitution, which allows for the "conditions and limits of the exercise" of the right of the person injured by a public authority to be determined by organic law, that three hypostases can be considered: an action against public authority only; an action against the official only; a concurrent action against both. Law 554/2004 on administrative contentious with the subsequent amendments and completions was focused on the last settled solution and in the old regulation in the matter, Law no. 29/1990, developed over time by administrative jurisprudence".

The same author¹⁰ noted that "the interpretation of the constitutional norms contained in par. (1) and in par. (3) of art. 52 allows identification of the following forms of state liability for damages: patrimonial liability of the state for damages caused by judicial errors; the patrimonial liability of public authorities for damages caused by administrative acts or the failure to solve within a legal time a request, with the possibility of introducing the official responsible for issuing the act in question; joint and several liability of public authorities and civil servants for damages caused to the public domain or as a result of poor public servants; the exclusive patrimonial responsibility of the public administration authorities for the limits of the public service".

In the opinion of the author, as regards state liability, this is not a liability for "fault in the sense that, in order to determine the patrimonial liability of the state, it is not necessary first to find fault".

⁶ A. Iorgovan, *op. cit.*, vol I, 2005, p. 66.

⁷ Law of administrative contentious no. 554/2004 in force as of 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

⁸ Article 5, paragraph 1, point. a) and b) and paragraphs (2) and (3) of the Law on administrative contentious no. 554/2004 in force as of 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

⁹ I. Muraru, E.S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 521.

¹⁰ *Ibidem*, pp. 523-524.

Regarding the other three forms of liability listed by the above-mentioned author, "*the fourth form is an objective liability, the person who has suffered damage must prove to the administrative court that the damage suffered is due to a limit of the public service. This form of responsibility therefore presupposes the fulfillment of the following three conditions: a) the existence of a public service which, by its nature, involves the risk of certain damage to citizens; b) the existence of material damage to the natural or legal person; c) the existence of a causal link between the public service risk (limit) and the proposed loss*".

Regarding the two forms of liability left and unannounced by the author, "*in the other two hypotheses listed there is a liability based on fault, which implies the fulfillment of the following four conditions: a) the administrative act to be illegal; b) there is damage; c) there is a causal relationship between the unlawful act and the damage caused; d) there is a fault of public authority*".

An author¹¹ said: "*There is no universally valid definition of good administration, apart from the normative texts that refer to this concept*".

The same author noted that "*the principle of good administration is an old and well-founded idea. Its specific content has been developed gradually, so it is currently one of the key concepts of modern administrative law*"¹².

In our opinion, ensuring good administration is done through the realization of rights guarantees. Thus, warranty rights ensure good governance. The protection of citizens' rights in front of public authorities is achieved at constitutional level through the correlation between the right of petition and the right of the person injured by a public authority.

3. Patrimonial liability of the state for damages caused by judicial errors

The patrimonial liability of the Romanian State for damages caused by judicial errors was regulated at constitutional level by art. 52 par. (3) of the Romanian Constitution. The provisions of this article were completed with the revision of the Constitution in 2003, state liability was completed at the general level, and we are no longer limited to judicial errors committed in criminal proceedings. The basic text provides for the state's right of recourse for the recovery of damage from magistrates who have "*exercised their office in bad faith or serious negligence*".

According to the constitutional regulation, the injured party can turn against the Romanian state to recover its damages, the state in its turn having a right of regress against the magistrate within the limits and under the law.

The constitutional text refers to the regulations of the organic law, the provisions of art. 96 of Law 303/2004 on the status of judges and prosecutors, which provided that "*(1) The State shall be liable for the damages caused by judicial errors. (2) State liability is established under the law and does not remove the liability of judges and prosecutors who have performed their duties in bad faith or serious negligence. (3) The cases in which the injured party is entitled to compensation for damages caused by judicial errors committed in criminal proceedings are established by the Code of Criminal Procedure. (4) The right of the injured party to reparation for material damages caused by judicial errors committed in lawsuits other than criminal ones shall be exercised only if a final decision has been established in advance by the criminal or disciplinary liability, as the case may be, of the judge or prosecutor for an act committed in the course of the trial and whether such an act is likely to cause a judicial error. (5) The person who in the course of the trial contributed in any way to the judicial error by the judge or prosecutor is not entitled to compensation for the damage. (6) In order to compensate the injured person, the injured party may appeal only against the state represented by the Ministry of Public Finance. (7) After the damage was covered by the state pursuant to the irrevocable decision given in compliance with the provisions of para. (6), the State may bring an action for damages against the judge or prosecutor who, in bad faith or in gross negligence, has*

¹¹ R. Carp, *În direcția unui drept administrativ european? Buna administrare potrivit normelor cu și fără forță constrângătoare ale Consiliului European și Uniunii Europene*, „Revista de drept public”, no. 4/2010, p. 2.

¹² T. Fortsakis, *Principles governing good administration*, „European Public Law”, vol. 11, issue 2, 2005, p. 207 *apud*. R. Carp, *op. cit.* (În direcția unui drept administrativ european?..), p. 2.

committed the injurious judicial error. (8) The limitation period for the right of action in all the cases provided for in this Article shall be one year. (1) Any person may refer the Superior Council of Magistrates directly or through the heads of the courts or prosecutors' offices in connection with the inappropriate activity or conduct of judges or prosecutors, violation of professional obligations in the relations with the judges or the committing of disciplinary deviations. (2) The exercise of the right provided in par. (1) can not call into question the solutions pronounced by the judgments, which are subject to legal remedies".

Thus, article 96 of Law no. 303/2004 on the Status of Judges and Prosecutors provided that the injured party can only bring an action against the State represented by the Ministry of Public Finance. The State in its turn may seek redress against a judge or prosecutor who, in bad faith or with gross negligence, has committed the error causing the damage. The limitation period was set at one year. Also, any person may file complaints against judges and prosecutors about their inappropriate activity or conduct, violation of professional obligations in relation to the legal person, or the occurrence of disciplinary misconduct.

Judges and prosecutors answer "civil, disciplinary and criminal, according to the law" according to the provisions of art. 94 of the Law 303/2004 on the status of judges and prosecutors.

As regards criminal and disciplinary liability, the Constitutional Court of Romania noted that "*any interested person has the complete freedom to bring an action against the judge/prosecutor who can take either the form of a criminal complaint or the form of a complaint addressed to the Inspection Judiciary within the Superior Council of Magistracy, under art. 45 par. (2) of the Law no. 317/2004. Therefore, from the point of view of criminal liability there is no difference of treatment between magistrates and other citizens, since if the social values protected by criminal law are violated, they, whether they are magistrates or not, can be criminalized as active subjects of crimes. At the same time, the criticism of the violation of the principle of equality of the citizens in the law can not be accepted from the point of view of the disciplinary liability, because the equality of the legal status of the magistrates and the legal status of other socioprofessional categories whose statutes are regulated by other special laws*"¹³.

Regarding the civil liability of magistrates, the Constitutional Court of Romania has found that this form of liability "*is inextricably linked to the work carried out in the exercise of the service duties and implies a mistake which takes the form of a judicial error. In order to be entitled to a claim for damages based on a judicial error, it is necessary to prove it. According to art. 52 par. (3) of the Constitution, the liability for damages caused by legal errors in relation to the injured victim is always and without exception, directly and directly, to the State. The victim of the judicial error has no opportunity to bring a direct action in damages to the magistrate - a judge or a prosecutor - to whom the judicial error may be attributable. Moreover, in accordance with art. 3 of Protocol no. In addition to the Convention, the reason for the recognition of a judicial error does not consist in drawing civil, criminal or disciplinary liability of a magistrate, but in granting the injured person the right to compensation. This does not mean that the magistrate's responsibility is removed from the plan, because on the contrary, the judge or prosecutor guilty of producing the judicial error responds in the alternative, but only to the state, which, according to art. 52 par. (3) the final sentence of the Constitution reflected in art. 96 par. (7) of the Law no. 303/2004, has an action against it, which is admissible if certain conditions are met*"¹⁴.

The Patrimonial Liability of the Romanian State for damages caused by judicial errors is not a liability for fault. Thus, an author¹⁵ has pointed out that "*the situation and procedure are the same if a natural or legal person has suffered some material damage by applying a law that the Constitutional Court has declared unconstitutional. The person concerned has the right to ask the court to order the State to make good the damage suffered during the period of the law's entry into force and until it has ceased to apply, without it being necessary to find fault*".

¹³ Decision of the Constitutional Court of Romania no. 263/2015 regarding the rejection of the unconstitutionality exception of the provisions of art. 96 of the Law no. 303/2004 on the status of judges and prosecutors, published in the Official Gazette, Part I no. 415 of 11.06.2015.

¹⁴ *Idem*.

¹⁵ I. Muraru, E.S. Tănăsescu (coord.), *op. cit.*, p. 523.

The patrimonial liability of the Romanian State for damages caused by judicial errors is a form of civil liability, which has been civilly regulated by the provisions of art. 1349 Civil Code.

The civil liability of the Romanian State for judicial errors is also a form of objective liability, since the injured person must not prove the guilt of the judge or prosecutor, as the Constitutional Court of Romania has held: "*through the institution of patrimonial responsibility of the state (...) also ensures protection of the victim of the injury, the situation of which is more favorable, in that it does not have to prove the guilt of the judge or the prosecutor, but only the proof of a judicial error and the prejudice. It is, in fact, an objective responsibility, based on the notion of warranty and risk of judicial activity*"¹⁶.

The Constitutional Court of Romania held that in the case of judicial errors, the injured person has no legal provision to direct the magistrate, judge or prosecutor, who has the right to file an action against the state, represented by the Ministry of Public Finance, for reparation of the damage because "*the institution of state patrimonial liability must be provided with protection of the judge and the prosecutor who can not answer directly to the victim under any circumstances. (...) As regards the liability of judges and prosecutors, they only respond patrimonial if they have acted in bad faith or serious negligence, in which case only the state may turn against the guilty party in damages*"¹⁷.

In the opinion of the Romanian administrative doctrine, one author¹⁸ has held that "*objective responsibility is committed in the absence of any guilty fact, being a liability due to the damage caused*".

The right of a person injured by a public authority ensures the constitutional guarantees of the citizen who, in any way, injured in a right or legitimate interest of a public authority in Romania, by an administrative act or by disobedience within the legal term of an application, may request and be afforded legal protection by its fundamental right to obtain recognition of the alleged right or legitimate interest, the annulment of the act and the repair of the damage.

The person injured by a public authority has the guarantee of legal protection by the constitutional norm, irrespective of the public authority which has brought him an injury, in this respect he has held the Constitutional Court of Romania "*that art. 2 par. (1) lit. b) of the Law of administrative contentious no. 554/2004 defines "public authority" as being any state body or administrative-territorial units acting in a public power regime to satisfy a public legitimate interest*"¹⁹.

At the same time, citizens are protected at constitutional level for damages caused by judicial errors. Thus, the right of the person injured by judicial errors to seek compensation from the state for the recovery of the damage suffered is ensured. Magistrates who have exercised their office in bad faith or serious negligence, are in turn responsible to the state for damages caused to injured persons.

Good governance is, in our view, the way in which the Romanian state ensures good administration to the citizens, and they benefit from the legal protection of fundamental rights provided by guarantee rights, which in fact guarantees the realization of all the fundamental rights of the citizens in a State law.

4. Conclusions

The constitutional regulation on the right of a person injured by a public authority in Romania refers to all administrative acts issued by public authorities, the constitutional legal force of which is not limited to acts issued by executive authorities.

The right of the person injured by a public authority was guaranteed by art. 52 of the Constitution of Romania, which in turn provided for the injured person to obtain either the recognition of the claimed right or the legitimate interest, or the annulment of the act and the reparation of the

¹⁶ Decision of the Constitutional Court of Romania no. 633 of 24 November 2005 on the objection of unconstitutionality of the provisions of art. 96 par. (6) of the Law no. 303/2004, published in the Official Gazette, Part I, no. 1138 of 15.12.2005.

¹⁷ *Idem*.

¹⁸ R.N. Petrescu, *Drept Administrativ*, Accent Publishing House, Cluj-Napoca, 2004, p. 544

¹⁹ Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 of 17.02.2016.

damage. The injured party can achieve his/her rights by exercising the right of free access to justice, under art. 21 of the Constitution of Romania.

Article 52 of the Romanian Constitution was the basis for the drafting of the legislation in the administrative field in Romania, respectively of the Law on administrative contentious no. 554/2004²⁰. According to art. 7 "(1) *Before appealing to the competent administrative litigation court, the person who considers himself / herself to be injured in his/her right or in a legitimate interest by means of an individual administrative act shall request the issuing public authority or the higher authority, if this exists, within 30 days of the date of communication of the act, the revocation in whole or in part thereof*".

The patrimonial liability of the Romanian State for damages caused by judicial errors was regulated at constitutional level by art. 52 par. (3) of the Romanian Constitution. The provisions of this article were completed with the revision of the Constitution in 2003, state liability was completed at the general level, and we are no longer limited to judicial errors committed in criminal proceedings. The basic text provides for the state's right of recourse for the recovery of damage from magistrates who have "*exercised their office in bad faith or serious negligence*".

Thus, Article 96 of Law 303/2004 on the Status of Judges and Prosecutors provided that the injured party can only bring an action against the State, represented by the Ministry of Public Finance of Romania. The State in its turn may seek redress against a judge or prosecutor who, in bad faith or with gross negligence, has committed the error causing the damage. The limitation period was set at one year.

Good governance is, in our view, the way in which the Romanian state ensures good administration to the citizens, and they benefit from the legal protection of fundamental rights provided by guarantee rights, which in fact guarantees the realization of all the fundamental rights of the citizens in a State law.

5. Recommendations and *de lege ferenda* proposals

We conclude this paper with the following proposals for *de lege ferenda*.

Having regard to the Recommendation CM/Rec(2007)7 of the Committee of Ministers of the member states of the Council of Europe, we consider that its provisions, part or all, may be included in the next revision of both the Constitution of Romania and the Constitution of the Republic of Moldova, thus :

1.1. *The principles of good administration can be considered as follows:*

1.1.1. The principle of legality

1.1.2. The principle of equality

1.1.3. Principle of impartiality

1.1.4. The principle of proportionality

1.1.5. The principle of legal certainty

1.1.6. The principle of taking action within a reasonable time

1.1.7. The principle of participation

1.1.8. The principle of privacy

1.1.9. The principle of transparency

1.2. *Recommendations of the Committee of Ministers to the Member States:*

1.2.1. Promoting good governance within the principles of the rule of law and democracy;

1.2.2. Promoting good governance within the organization and functioning of public authorities, ensuring efficiency, effectiveness and resource optimization. These principles would require Member States to:

- Ensure objectives are set and performance indicators are designed to regularly monitor and measure the achievement of objectives by the administration and civil servants.

²⁰ Law of administrative contentious no. 554/2004 in force as of 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

- Obligation on public authorities to regularly verify, under the law, whether services are provided at an appropriate cost and whether they should be replaced or withdrawn.
- Oblige the administration to seek the best means to obtain the best results.
- Performing internal and external monitoring of the administration and the work of civil servants.

1.2.3. Promoting the right to good administration in the interests of all, by adopting, if necessary, the standard model of the *Code of Good Administration* annexed to the recommendation, ensuring its implementation by Member State officials and adopting the measures allowed by constitutional systems; legal systems to ensure that local and regional governments adopt the same standards.

Thus, the Constituent may decide, on the one hand, which of these principles can be introduced in the Constitution of Romania and the Republic of Moldova and on the other on the introduction in the Constitution of Romania and the Republic of Moldova of a new article in the content of Title II Rights, Fundamental Freedoms and Duties, Chapter II Fundamental Rights and Freedoms, entitled "*The Right to Good Administration*" and more on the possibility of recognizing the *Code of Good Administration* by its nomination in the text of the Constitution of Romania and the Republic of Moldova, its content being individualized as Annex to Recommendation CM/Rec (2007)7 of the Committee of Ministers of the Member States of the Council of Europe.

We also believe that a *Code of Good Administration* which could contain the provisions mentioned in Recommendation CM/Rec (2007)7 of the Committee of Ministers of the member states of the Council of Europe could be drafted both in Romania and in the Republic of Moldova.

At the same time, the recommendation could be the basis for the elaboration of an *Administrative Procedure Code*, adopted both in Romania and in the Republic of Moldova, which was discussed and not finalized either in Romania or in Moldova at the time of the present proposal.

Considering the content of Article 51, regarding the right of petition, we consider in the Constitution of Romania that the provisions that are not found in the Constitution of the Republic of Moldova in the content of art. 52 on the right to petition, in whole or in part, could be included in the following revision in the Constitution of the Republic of Moldova by completing Article 52 of the Constitution of the Republic of Moldova with the following paragraphs: "(3) *The exercise of the right to petition is exempt from the tax. (4) The public authorities have the obligation to respond to the petitions within the terms and conditions established by the law*".

Considering the content of Article 52 regarding the right of a person injured by a public authority in the Romanian Constitution, we consider that its provisions, which are not found in the Constitution of the Republic of Moldova, in the content of art. 53 on the right of the person injured by a public authority, in whole or in part, could be included, in the next revision, and in the Constitution of the Republic of Moldova, by completing article 53: "Amend and complete para. (1) of art. 53 of the Constitution of Moldova with the phrase "or in a legitimate interest" and with the phrase "or the legitimate interest". Thus, paragraph (1) shall have the following content: "A person injured in a right of his own or in a legitimate interest, by a public authority, by an administrative act or by the failure to solve within the legal term of a request, is entitled to the recognition of the right alleged or legitimate interest, the annulment of the act and the repair of the damage. "A new paragraph may be inserted. "(2) The conditions and limits for the exercise of this right shall be determined by organic law". We propose the renumbering of paragraph (2) in paragraph (3) and the amendment of the new paragraph (3) as follows: the phrase "the errors committed in criminal proceedings by the investigating bodies and the courts" is deleted and the content is changed as "judicial errors. State liability is established under the law and does not remove the liability of magistrates who have exercised their function in bad faith or serious negligence". Thus, paragraph (3) may have the following content: "(3) The State shall be liable for the damage caused by judicial errors. State liability is established under the law and does not remove the liability of magistrates who have exercised their functions in bad faith or serious negligence".

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