

IDENTIFYING THE RIGHT OF A PERSON AGGRIEVED BY A PUBLIC AUTHORITY IN THE CONSTITUTION OF ROMANIA, IN THE CONSTITUTION OF REPUBLIC OF MOLDOVA AND IN COMPARATIVE LAW

PhD. student **Cătălin-Radu PAVEL**¹

Abstract

The current study aims to present selective aspects regarding the right of a person aggrieved by a public authority and the findings in the Constitution of Romania, in the Constitution of Republic of Moldova and in comparative law. The right of a person aggrieved by a public authority is regulated by the Article 52 of the Constitution of Romania. The right of a person aggrieved by a public authority in Romania ensures and protects the manifestations of will of the citizens in relation with the public authorities, as well as with other rights, freedoms and citizens' interests, thus ensuring a good administration of the state in favor of the citizens. 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 findings in the Constitution of Romania, in Constitution of Republic of Moldova and in comparative law about the right of a person aggrieved by a public authority.

Keywords: *the right of a person aggrieved by a public authority, the Constitution of Romania, good administration, the Constitution of Republic of Moldova, comparative law.*

JEL Classification: K10, K23

1. Introductory aspects

Article 52 of the Romanian Constitution² guarantees the right of the citizen, who has been harmed by a public institution in Romania, to obtain the recognition of the claimed right, the annulment of the illegal act that caused him damage and the reparation of the damages caused.

The right of the injured person by a public authority, together with the right to petition make up the class of guarantee rights.

The guarantee rights ensure the protection of the citizens' manifestations of will in relation to the public authorities, as well as with other rights, freedoms and citizen interests, thus ensuring a good administration of the state in favor of the citizens.

Article 52 of the fundamental law „represents the constitutional legal basis for assuming the responsibility of public authorities before the citizen, respectively before the injured person in a right or a legitimate interest, resulting in legal protection of the latter, by annulling the act and repair the damage”³.

Prof. I. Muraru, E.S. Tănăsescu⁴, regarding the right of the person injured by a public authority, mentioned that „the amendments brought by par. (1) through the Revision Law pursued a correlation with the other constitutional provisions and first of all, with art. 21 which regulates free access to justice, in the sense that any person may apply to the judiciary for the defense of his rights, freedoms and legitimate interests, and no law may restrict the exercise of this right. In accordance with this constitutional provision, the text has been supplemented in the sense that it is entitled to action in the administrative contentious court, not only the injured person in a right recognized by law, but also the injured person in a legitimate interest (direct and personal).”

Thus, the legal protection of the right of the injured person by a public authority is achieved through the right of free access to justice guaranteed by art. 21 of the Romanian Constitution.

¹ Cătălin-Radu Pavel – Lawyer in Bucharest Bar Association, Romania, radu.pavel@avocatpavel.ro

² The Romanian Constitution of 2003 was published in the Official Gazette no. 767 of December 31, 2003.

³ Pavel Cătălin-Radu, *Aspecte selective privind realizarea drepturilor garanții*, in the Volume of the VI International Forensic Conference on the topic: “Forensic methods and techniques used in the investigation of corruption crimes, assimilated or related”, Romanian Association of Criminalists, Bucharest, 2017, pp. 241.

⁴ I. Muraru, E.S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole*, Ed. C.H. Beck, Bucharest, 2008, p. 517.

2. Identifying the right of the injured person by a public authority in the Romanian Constitutions

Following the analysis of the Romanian constitutional provisions regarding the right of the injured person by a public authority starting with the Development Statute of the Paris Convention, a status that had the value of the Romanian Constitution and up to the contemporary constitutional system, respectively the 2014 Romanian Constitution Revision Bill.

The Development Statute of the Paris Convention of 7/19 August 1858⁵ was adopted by the Lord of the Romanian Principalities, Alexandru Ioan I in May 1864. This statute had the value of the Romanian Constitution, being mentioned in its preamble: “The Convention concluded in Paris on August 7/19, 1858, between the Suzeran Court and between the Powers guaranteeing the autonomy of the United Principalities, it is and remains the fundamental law of Romania.”⁶

From the contents of the Development Statute of the Paris Convention of August 7/9, 1858, it was found that it does not contain provisions regarding the right of the person injured by a public authority.

The Romanian Constitution adopted on June 29, 1866⁷ entered into force on the date of sanction, respectively June 30, 1866 and was published in the Official Gazette of Romania no. 142 of 1/3 July 1866. With the entry into force of the Romanian Constitution of 1866, the fundamental rights of citizens were also regulated.

From the analysis of the Romanian Constitution from 1866, the provisions of art. 29: “No prior authorization is required to prosecute civil servants for the acts of their administration by the injured parties; but the special rules regarding ministers remained untouched. The cases and the way of pursuit will be regulated by a certain law. Special provisions in the criminal code will determine the penalties”⁸.

The provisions of art. 29 of the Romanian Constitution of 1866 refer to the right of the person injured by a civil servant and to the fact that the ways of pursuing him will be regulated by law. We thus identify the right of the person injured by a public authority in the form previously mentioned in the Romanian Constitution of 1866.

The Constitution of March 29, 1923⁹ entered into force on the date of sanction, respectively March 28, 1923 and was published in the Official Gazette of Romania no. 282 of March 29, 1923. The Romanian Constitution of 1923 enshrines equal rights and freedoms for all people.

From the analysis of the Romanian Constitution from 1923, the provisions of art. 31: “No prior authorization is required in order to prosecute civil servants for the acts of their administration by the injured parties, but the special rules established regarding ministers remain untouched. The cases and the manner of prosecution shall be governed by specific law.”¹⁰

Provisions have been identified regarding the guarantee of the exercise of prosecutions against civil servants for the deeds of their administration by the injured parties. We notice that the fundamental right kept the same form as in the Romanian Constitution of 1866.

The Romanian Constitution of February 28, 1938¹¹ entered into force on the date of the sanction, respectively February 27, 1938 following the plebiscite held on February 24, 1938, being decreed by King Carol II. The Romanian Constitution of 1938 was published in the Official Gazette, part I, no. 48 of February 27, 1938.

From the analysis of the Romanian Constitution of 1938, no provisions were identified regarding the right of the person injured by a public authority.

The Constitution of April 13, 1948¹² was promulgated by Decree no. 729 of April 13, 1948

⁵ I. Muraru, M.L. Pucleanu, G. Iancu, C.L. Popescu, *Constituțiile Române Texte. Note. Prezentare Comparativă*, Ed. Regia Autonomă „Monitorul Oficial”, Bucharest, 1993, pp. 7-14.

⁶ Ibid, p. 7

⁷ Ibid, pp. 33-66.

⁸ Ibid, p. 40

⁹ Ibid, pp. 71-92.

¹⁰ Ibid, p. 77.

¹¹ Ibid, p. 97-117.

¹² Ibid, pp. 121-138.

of the Provisional Presidium of the Romanian People's Republic and entered into force on the date of publication in the Official Gazette, part I, no. 87 bis, respectively on April 13, 1948. The Constitution of 1948 enshrines that all power emanates from the people and belongs to the people.

From the analysis of the Romanian Constitution from 1948, the provisions of art. 34: "Every citizen has the right to petition, as well as the right to request the bodies provided by law to sue any civil servant for crimes committed during the exercise of the service."¹³

It was identified in the Romanian Constitution of 1948 that together with the right to petition was regulated in the same fundamental article and the right to request the bodies provided by law to prosecute any civil servant for crimes committed during the service.

The Constitution of the Romanian People's Republic of September 24, 1952¹⁴ was promulgated and adopted on September 24, 1952 and was published in the "Official Bulletin of the Grand National Assembly of the Romanian People's Republic" no. 1 of September 27, 1952.

Following the analysis of the 1952 Constitution, no provisions were identified regarding the guarantee of the right of the injured person by a public authority.

The Constitution of August 21, 1965¹⁵ was adopted by the Grand National Assembly at its meeting of August 21, 1965 and was published in the "Official Gazette of the R.S.R." no. 1 of August 21, 1965.

From the analysis of the Constitution of 1965, the provisions of art. 35: "The person injured in his right by an illegal act of a state body may request the competent bodies, under the conditions provided by law, to annul the act and repair the damage."¹⁶

Regulations on the rights of the injured party in a right of their own or by an illegal act of a state body were identified in the Romanian Constitution of 1965.

The Romanian Constitution of December 8, 1991¹⁷ entered into force on December 8, 1991, when it was approved by the national referendum organized for this purpose and was published in the "Official Gazette of Romania" no. 223 of November 21, 1991.

From the analysis of the Romanian Constitution of 1991, the provisions of art. 48: "The right of the person injured by a public authority (1) The person injured in his right by a public authority, by an administrative act or by not resolving a request within the legal term, is entitled to obtain the recognition of the claimed right, annulment act and reparation of damage. (2) The conditions and limits of the exercise of this right are established by organic law. (3) The state is patrimonially liable, according to the law, for the damages caused by the judicial errors committed in the criminal proceedings."

It was found that the 1991 Constitution stipulates that the state is responsible for judicial errors, which are limited to those committed in criminal proceedings. The Constitution calls this right the right of the person injured by a public authority and provides for the establishment of the conditions and limits of its exercise by organic law.

In the contemporary legal system, the right of the person injured by a public authority, as a fundamental right in Romania, was regulated by the provisions of art. 52 of **the Romanian Constitution revised in 2003**¹⁸: "(1) A person injured in a right or in a legitimate interest, by a public authority, by an administrative act or by the failure to resolve a request within the legal term, is entitled to obtain the recognition of the claimed right or of the legitimate interest, the annulment of the act and the reparation of the damage. (2) The conditions and limits of the exercise of this right are established by organic law. (3) The state is patrimonially liable for the damages caused by the judicial errors. The liability of the state is established in accordance with the law and does not remove the liability of magistrates who exercised their office in bad faith or gross negligence."

¹³ Ibid, p. 126.

¹⁴ Ibid, pp. 141-159.

¹⁵ Ibid, pp. 165-187.

¹⁶ Ibid, p. 171.

¹⁷ The Romanian Constitution of 1991 was published in the Official Gazette no. 233 of November 21, 1991.

¹⁸ Ibid.

From the analysis of the **Draft Law on the revision of the Romanian Constitution of 2014**¹⁹, the proposed amendments for the revision of art. 52 of the Constitution in force. Thus, in the revision proposal, art. 52 should be amended and supplemented as follows: "Paragraph (2) shall read as follows: "(2) The conditions and limits for the exercise of this right shall be established by law." Paragraph (3) shall have the following content: "(3) The State shall be patrimonial, integral and non-discriminatory, for damages caused by judicial or administrative errors. The liability of the state is established in accordance with the law and does not remove the liability of magistrates or officials who have committed judicial and administrative errors." After paragraph 3, a new paragraph is inserted, with the following wording: "(3.1) The State is obliged to immediately rectify the perpetrators of judicial or administrative errors causing damage."²⁰

3. Identification of the right of the injured person by a public authority in the Constitution of the Republic of Moldova

The right of the person injured by a public authority was guaranteed in **the Constitution of the Republic of Moldova** in Article 53: „(1) The person injured in his right by a public authority, by an administrative act or by the non-settlement within the legal term of a request, is entitled to obtain the recognition of the claimed right, the annulment of the act and the reparation of the damage. (2) The state is patrimonially liable, according to the law, for the damages caused by the errors committed in the criminal proceedings by the investigative bodies and the courts.”

4. Identifying the right of the injured person by a public authority in the comparative law

From the comparative law, the constitutions of the following states were selected for analysis: the Constitution of the French Republic, the constitutional acts of the United Kingdom of Great Britain and Northern Ireland, the Fundamental Law for the Federal Republic of Germany, the Constitution of the Republic of Italy, the Constitution of Spain, the Constitution of the Hellenic Republic, the Constitution of Japan, the Constitution of the Republic of Slovenia, the Constitution of the Republic of Lithuania, the Constitution of the Republic of Poland, the Constitution of the Portuguese Republic, the Constitution of the Slovak Republic and the Constitution of Hungary.

The provisions of the fundamental laws of the mentioned states were analyzed, regarding the form enshrined by each state of the right of the injured person by a public authority.

In **the Constitution of the French Republic**²¹ were identified provisions regarding the right of the company to demand accountability from any public agent in the provisions of art. 15 of the Declaration of the Rights of Man and of the Citizen²² of August 26, 1789: "The society has the right to demand accountability from any public agent within its administration."

The preamble to the Constitution of the French Republic of 4 October 1958 stated that the French people proclaimed: "Solemnly their attachment to human rights and the principles of national sovereignty, as defined in the Declaration of 1789 confirmed by the preamble to the Constitution of 1946."²³

No provisions were identified regarding the right of the injured person by a public authority in the Constitution of the French Republic of October 4, 1958, these being mentioned in the Declaration of the Rights of Man and of the Citizen, a statement that is part of the so-called French "constitutional bloc", being an integral part of the Constitution.

¹⁹ The Draft Law on the revision of the Romanian Constitution of 2014 was published in the Official Gazette no. 100 of February 10, 2014.

²⁰ The legislative initiatives of the citizens according to Law no. 189/1999. Statement of reasons for the draft law on the revision of the Romanian Constitution - citizens' legislative initiative, December 10, 2013 Published in the Official Gazette, Part I, no. 100 from 10.02.2014.

²¹ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, *Codex Constituțional. Constituțiile statelor membre ale Uniunii Europene*, vol. I, Ed. Monitorul Oficial, Bucharest, 2015, pp. 637-667.

²² Ibid, pp. 668-670.

²³ Ibid, p. 637.

A first author²⁴, referring to Article 15, said that: „this wording, which today seems a little embarrassing and brutal, was the basis for the "invention" of the jurisdictional function of the French Council of State jurisprudence of this prestigious court regarding the liability (subjective and objective) administrative. In fact, this is the source of specific features, specific to administrative liability, which differentiates it from liability in civil or criminal law. Based on the "exorbitant" legal regime (as Napoleon would later call it) that benefits the public administration, it must exercise its powers within the limits set by law; however, as soon as it causes damage, its liability is incurred on the basis of the mere fact of proving the damage and the causal administrative act, the injured party no longer having the burden of proving the causal link between the administrative act and the damage or guilt of the administrative authority. This enshrines a tougher legal regime of liability for the public administration than the individual subjects of law, precisely in consideration of the authority attributes from which they benefit.”

In the United Kingdom, although there is no written constitution, given the tradition, **the constitutional acts of the United Kingdom of Great Britain and Northern Ireland**²⁵ have been taken into account.

From the analysis the constitutional acts of the United Kingdom of Great Britain and Northern Ireland were identified in the document "Bill of Rights" (1689) Declaration of Human Rights²⁶ in point I, sub-point 13 the statement: „in order to redress all injustices and to amend, comply with and enforce the law, Parliament will have to meet frequently. They claim, demand and insist on the above and those mentioned in the introductory part of this document, as these are their indisputable rights and freedoms and also that no statements, judgments, actions or proceedings, which have harmed the people in - one of the above points, not to be able to serve in any way in the future as a precedent or as an example. Being especially encouraged by the declaration of His Highness, the Prince of Orania, to make this claim of their rights considered as the only means of obtaining full reparation and Having therefore full confidence that His Highness, the Prince of Orania, will complete the granting of the rights hitherto granted and will continue to protect them from violations of their rights and all violations of their religion, rights and freedoms.”

Provisions have been identified in the constitutional acts of the United Kingdom of Great Britain and Northern Ireland, respectively in the “Human Rights Act 1998”²⁷ relating to “Judicial damages 8.1. When the court concludes that a judgment issued by a public authority is (or could be) illegal, it may grant, on the basis of its powers, compensation or redress or issue an order, which it deems appropriate and fair. 2. Compensation may, however, be awarded only by a court which has such jurisdiction or which has the power to order the payment of compensation in civil actions. 3. In all circumstances, no compensation shall be awarded for damages, including: a. Any compensation or reparation granted or any order given in connection with the decision in question (by the same court or any other) and b. The consequences of any court decisions (of the same court or of any other) in relation to the respective decision unless the court is convinced that damages are indispensable to allow a just reparation to the person in whose favor they were made. 4. In order to decide a. Whether to award damages or b. The amount of damages, the court must take into account the principles applied by the European Court of Human Rights regarding the award of compensation under Article 41 of the Convention. 5. A public authority against whose decisions compensation has been awarded shall be treated: a. In Scotland, in accordance with Chapter 3 of the Legislative Reform (Other Provisions) Act (Scotland) of 1940, as if the compensation were allocated in in an action for damages in which the authority was found liable for the loss or damage caused to the person in whose favor the damages were awarded; b. within the meaning of the Law on Civil Liability (Contributions) of 1978, as being responsible for the damage suffered by the person in whose favor the damages were

²⁴ E.S. Tănăsescu, *Prezentarea comparativă a abordărilor constituționale din alte state cu privire la răspunderea autorităților publice față de cetățeni și relativ la integrarea în Uniunea Europeană*, „Revista de drept public” no. 2/2002, pp. 16-23.

²⁵ E.S. Tănăsescu, N. Pavel, *Actele constituționale ale Regatului Unit al Marii Britanii și Irlandei de Nord*, Ed. All Beck, Bucharest, 2003, pp. 36-100.

²⁶ *Ibid.*, pp. 82-83.

²⁷ Ș. Deaconu, I. Muraru, E.S. Tanasescu, S. G. Barbu, *Codex Constitutional Constitutiile statelor membre ale Uniunii Europene*, vol. II, Ed. Monitorul Oficial, Bucharest, 2015, p. 232.

allocated. 6. In this chapter the term "court" also includes the court, the term "compensation" refers to compensation for an illegal decision taken by a public authority, and "illegal" means illegal in accordance with Chapter 6, paragraph 1."²⁸

From the analysis of the Fundamental Law for the Federal Republic of Germany²⁹, the provisions of art. 34. "[Liability for breach of duty] If a person, in the exercise of a public office entrusted to him, breaches his duty of service to a third party, then the responsibility falls, in principle, on the State or the body constituted in whose service it is. In case of premeditation or gross negligence, the path of regression remains open. For claims for damages and for recourse, the ordinary judicial route cannot be closed."³⁰

It was found that the provisions on liability for breach of duty in the exercise of a public office were also found in the Basic Law for the Federal Republic of Germany.

From the analysis of the Constitution of the Republic of Italy³¹, the provisions of art. 28: "Officials and employees of the state and public institutions are directly responsible, in accordance with the criminal, civil and administrative laws, for the action by which they violate the rights of citizens. In such cases, the civil liability extends to the State and public institutions."³²

The provisions on liability in the event of judicial error have also been identified in the Italian Constitution in Article 24, paragraph 4: "The law defines the conditions and forms of reparation in the event of judicial error."³³

From the analysis of **the Spanish Constitution**³⁴, the provisions of art. 106: "(1) The courts control the regulatory power and the legality of the administrative action, as well as its submission to the purposes that justify it. (2) Individuals have the right, according to the law, to be compensated for any damage to their rights and property, except in cases of force majeure, whenever these damages are the consequence of the operation of public services."³⁵

Also, in the Spanish Constitution, the provisions of art. 121: "Damages caused by judicial errors, as well as those that are the consequence of the abnormal functioning of the administration of justice, give the right to compensation that is borne by the state, according to the law."³⁶

In **the Constitution of the Hellenic Republic**³⁷ were identified the provisions of art. 10 paragraph (3) which states that: "3. The service or the competent authority has the obligation to respond to requests for the provision of information and documents, in particular certificates, supporting documents and attestations, within a set period that may not exceed 60 days, under the conditions provided by law. If no action is taken within this period or, in case of an illegal refusal, in addition to any other sanctions or legal consequences, the applicant will be paid a special pecuniary compensation, under the conditions provided by law."³⁸

The constitutional guarantee was identified in the Constitution of the Hellenic Republic, within the provisions of art. 10 para. (3), regarding the payment of compensations in case of refusal of public authorities to respond or to comply with the citizen's petition.

From the analysis of **the Constitution of the Republic of Cyprus**³⁹, the provisions of art. 11 paragraph (8): "Any person who has been the victim of an unfounded arrest or detention in violation of the provisions of this article has a guaranteed right to compensation."⁴⁰

At the same time, the provisions of art. 146 paragraph (6) of **the Constitution of the Republic of Cyprus**: "Any person injured by any decision/act which has been declared null and void pursuant to paragraph 4 of this article or by any omission in respect of which it has been declared should have

²⁸ Ibid, pp. 238-239.

²⁹ E. Focșeneanu, *Legea Fundamentală pentru Republica Federală Germania*, Ed. All Educațional S.A., Bucharest, 1998, pp. 29-140.

³⁰ Ibid, p. 51.

³¹ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, *op. cit.* (2015), vol. I, pp. 811-844.

³² Ibid, pp. 815.

³³ Ibid, pp. 815.

³⁴ E. Focșeneanu, *Constituția Spaniei*, Ed. C.H. Beck, Bucharest, 2006, pp. 13-97.

³⁵ Ibid, p. 57.

³⁶ Ibid, p. 63.

³⁷ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, *op. cit.* (2015), vol. I, pp. 463-542.

³⁸ Ibid, p. 483.

³⁹ Ibid, pp. 301-386.

⁴⁰ Ibid, p. 309.

been made has the right, if his request has not been satisfied by the body, authority or person concerned, to bring an action before a court for damages or other redress and to obtain fair compensation and fair to be calculated by the court or to be awarded other fair and equitable reparations which that court has jurisdiction to grant."⁴¹

From the analysis of **the Constitution of Japan**⁴², the provisions of art. 17 which states that: "Any person who has suffered an injury through the illegal act of a civil servant has the right to claim its reparation from the State or from public bodies, as established by law."⁴³

The Constitution of the Republic of Slovenia⁴⁴ established in the provisions of art. 26 on the right to compensation that: "any person has the right to compensation for damages caused by illegal actions in connection with the exercise of any function or any other activity by a person or body performing that function or activity under the authority of the state, of the local community or as a holder of public authority. Any injured person also has the right to claim, according to the law, compensation directly from the person or body that caused the damage."⁴⁵

At the same time, mentions were provided regarding the right to rehabilitation and compensation in the content of art. 30 of the Constitution of the Republic of Slovenia: "Any person unjustly convicted of an offense or deprived of his liberty without cause shall be entitled to rehabilitation and compensation, as well as other rights provided by law."⁴⁶

In **the Constitution of the Republic of Lithuania**⁴⁷ the provisions of art. 33 para. 2: "Citizens are guaranteed the right to criticize the activity of state institutions or their officials and to challenge the decisions issued by them. Sanctioning as a result of criticism is prohibited."⁴⁸

Analyzing the provisions of **the Constitution of the Republic of Poland**⁴⁹, the provisions of art. 77 the contents of which contain statements concerning compensation: „1. Everyone has the right to compensation for damage suffered as a result of illegal action by public authorities. 2. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation."⁵⁰

At the same time, we also identified the provisions of art. 41 para. 5: "Anyone who has been unlawfully deprived of his liberty is entitled to compensation."⁵¹

Following the analysis of the provisions of **the Constitution of the Portuguese Republic**⁵², the provisions of art. 22: „Liability of public bodies. Together with the incumbents, their staff and agents, the state and other public bodies are liable under civil law for actions or omissions related to the performance of their duties that result in violation of rights, freedoms or guarantees or loss suffered by others”.⁵³

The provisions of art. 29. para. 6. of the Constitution of the Portuguese Republic on the guarantee of the right to compensation in case of wrongful conviction: "Citizens who are wrongfully convicted have the right, according to law, to review those judgments and to compensate for the damages suffered."⁵⁴

The Constitution of the Slovak Republic⁵⁵ regulated provisions regarding persons harmed by the public administration, according to art. 46 paragraphs (2), (3) and (4): "(2) Anyone who considers that his rights have been infringed by a decision of a public administration body may refer the matter to the competent court, so that the latter may examine the legality of this decision, unless

⁴¹ Ibid, p. 363.

⁴² E. Focșeneanu, *Constituția Japoniei*, Ed. All Educațional S.A., Bucharest, 1997, pp. 21-68

⁴³ Ibid, p. 29.

⁴⁴ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, *op. cit.* (2015), vol. II, pp. 549-588.

⁴⁵ Ibid, p. 554.

⁴⁶ Ibid, p. 554.

⁴⁷ Ibid, pp. 45-85.

⁴⁸ Ibid, p. 50.

⁴⁹ Ibid, pp. 296-362.

⁵⁰ Ibid, p. 323.

⁵¹ Ibid, p. 315.

⁵² Ibid, pp. 376-473.

⁵³ Ibid, p. 383.

⁵⁴ Ibid, p. 386.

⁵⁵ Ibid, pp. 487-537.

the law provides otherwise. However, the retrial of judgments on fundamental rights and freedoms cannot be taken out of the jurisdiction of the court. (3) Every person has the right to compensation for damages suffered, as a result of a decision contrary to law, pronounced by a court or by another state or body of public administration or as a result of an incorrect judicial procedure. (4) The conditions and modalities of legal protection, as well as the other forms of legal protection, are established by law.”⁵⁶

From the analysis of **the Hungarian Constitution**⁵⁷, the provisions of art. XXIV: „1. Everyone has the right to have his business treated by the authorities impartially, fairly and within a reasonable time. The authorities are obliged to present the reasons underlying the decisions taken, as provided by law. 2. Everyone has the right to compensation for damage that has been unlawfully caused to him by the authorities in the performance of their duties, as provided by law.”⁵⁸

In this paragraph, in the comparative law, provisions in the Constitutions of the selected states regarding the guarantee of the right of the injured person by a public authority were analyzed.

The right of the person injured by a public authority has been identified in the Constitutions of the selected states of the European Union and in countries outside the European space such as Japan.

The regulations and constitutional principles of guaranteeing the right of the injured person by a public authority present similar aspect of regulation in the Constitutions analyzed in the comparative law study.

5. Recommendations and proposals *de lege ferenda*

Following the analysis of the legal regulations in Romania and in the Republic of Moldova regarding good administration and guarantee rights, we identified aspects that could be improved:

- The right to good administration is not stated *expressis verbis* in the Constitution of Romania and the Republic of Moldova, even if, in our opinion, in the Constitution of Moldova, the right to good administration has been enshrined, which in our opinion is not a right to good administration but covers part of the content of this right.

- The Basic Law of the Republic of Moldova establishes insufficient guarantees of tax exemption within the exercise of the right to petition and regarding the obligation of public authorities to respond to petitions within the terms and conditions established by law.

- The Constitution of the Republic of Moldova establishes insufficient guarantees of the responsibility of the state and of magistrates who exercised their function in bad faith or gross negligence.

We also formulate the following proposals *de lege ferenda*, which were identified following the study:

- The Constituent Assembly may decide on the introduction in the Constitution of Romania and the Republic of Moldova of a new article in the content of Title II Fundamental rights, freedoms and duties, Chapter II Fundamental rights and freedoms, entitled "Right to good administration" and more, with on the possibility of recognizing the Code of Good Administration by naming it in the text of the Constitution of Romania and the Republic of Moldova, its content being individualized as an annex of Recommendation CM/Rec (2007) 7 of the Committee of Ministers of Council of Europe member states.

- We also consider that a *Code of Good Administration* could be developed, both in Romania and in the Republic of Moldova, 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.

- Pursuant to the content of article 51 of the Romanian Constitution, regarding the right to petition, we consider 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 part or in full, could be included, at the

⁵⁶ Ibid, p. 499-500.

⁵⁷ Ibid, pp. 783-835.

⁵⁸ Ibid, p. 798.

next revision in the Constitution of the Republic of Moldova, by supplementing 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 tax. (4) The public authorities have the obligation to respond to petitions within the terms and under the conditions established according to the law.”

- In accordance with article 52 on the right of the injured person 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 injured person by a public authority, in part or in full could be included, at the next revision, in the Constitution of the Republic of Moldova, by supplementing Article 53: „Amend and supplement para. (1) in art. 53 of the Constitution of Moldova with the phrase “or in a legitimate interest” and with the phrase „or of a legitimate interest”. Thus, para. (1) shall have the following content: „The person injured in a right or in a legitimate interest, by a public authority, by an administrative act or by the failure to resolve an application within the legal term, is entitled to obtain the recognition of the right claimed or legitimate interest, annulment of the act and reparation of the damage.” A new paragraph could be introduced: „(2) The conditions and limits of the exercise of this right shall be established by organic law”. We propose the renumbering of para. (2) in par. (3) and the modification of the new par. (3) as follows: the phrase: „errors committed in criminal proceedings by investigative bodies and courts” shall be deleted and the content shall be amended to read as follows: „judicial errors. The liability of the state is established in accordance with the law and does not remove the liability of magistrates who have exercised their office in bad faith or gross negligence.” Thus, para. (3) could have the following content: „(3) The State is patrimonially liable for damages caused by judicial errors. The liability of the state is established in accordance with the law and does not remove the liability of magistrates who have exercised their office in bad faith or gross negligence.”

5. Conclusions

Good administration is guaranteed by the constitutional provisions of the right of the injured person by a public authority. Thus, by realizing this right, a good administration of the rule of law and the observance of the rights and legitimate interests of the citizen are ensured.

Good administration is achieved by ensuring the fundamental right of the injured person by an administrative act or by not resolving a request within the legal term and by the right to address the competent authorities and to be entitled to obtain recognition of the claimed right or legitimate interest, cancellation act and reparation of damages.

The right of the person injured by judicial error is guaranteed by art. 52 of the Romanian Constitution. This ensures a good administration of the state, guaranteeing the responsibility of the state for judicial errors and also the right to regress of the latter against the magistrates who exercised their function in bad faith or serious negligence.

Article 52 of the Romanian Constitution guarantees the right of the citizen, who has been harmed by a public institution in Romania, to obtain the recognition of the claimed right, the annulment of the illegal act that caused him damage and the reparation of the damages caused.

The right of the injured person by a public authority, guaranteed by art. 52 of the fundamental law of Romania, together with the right to petition, previously analyzed in this study, make up the class of guarantee rights.

The guarantee rights ensure the protection of the citizens' manifestations of will in relation to the public authorities, as well as with other rights, freedoms and citizen interests, thus ensuring a good administration of the state in favor of the citizens.

The right of the person injured by a public authority has been identified as a fundamental right, since the first Romanian Constitutions, being guaranteed in favor of the citizen.

At the same time, the right of the person injured by a public authority was also identified in the comparative law, being a fundamental right guaranteed at the level of other states.

The legal protection of the right of the injured person by a public authority is achieved through the right of free access to justice.

In Romania as well as in the Republic of Moldova, the institution of administrative litigation is the guarantee of the citizen, granted by the state to curb possible abuses of public authorities in order to protect citizens' rights and freedoms.

The constitutional regulation on the right of the injured person by a public authority refers to all administrative acts issued by public authorities; its constitutional legal force not being limited to acts issued by executive authorities. It does not apply to laws issued by Parliament, but applies to administrative acts issued by Parliament. The regulation does not have applicability in the sphere of court decisions, but it has applicability regarding the administrative acts issued by the courts, prosecutor's offices or other state structures.

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