CONSTITUTIONAL COURT OF ROMANIA AND OF THE REPUBLIC OF MOLDOVA CASE LAW ABOUT THE RIGHT OF A PERSON AGGRIEVED BY A PUBLIC AUTHORITY

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Abstract

The present article aims to present selective aspects regarding the Constitutional Court of Romania and of the Republic of Moldova case law about the right of a person aggrieved by a public authority. The right of a person aggrieved by a public authority is constitutionally guaranteed in Romania and in the Republic of Moldova. The constitutional guarantee of the right of a person aggrieved by a public authority represents the constitutional legal basis of assuming the responsibility of the public authorities before the citizen, respectively before the injured person in a right or in a legitimate interest, having as consequence his legal protection, the latter, by cancelling the disposition and repairing the damages. 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 selective aspects regarding the Constitutional Court of Romania and of the Republic of Moldova case law about the right of a person aggrieved by a public authority.

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

JEL Classification: K10, K23

1. Introductory aspects

The right of the injured person by a public authority from the fundamental law of Romania and the Republic of Moldova "represents the constitutional legal basis of assuming the responsibility of public authorities before the citizen, respectively before the injured person in his right or in a legitimate interest, having the right consequently, the legal protection of the latter, by annulling the act and repairing the damage"[2].

Professors I. Muraru, E. S. Tănăsescu[3], regarding the right of the person injured by a public authority, mentioned that "the amendments brought by para. (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.

All the rights and guarantees regarding the injured person in a right of his or in a legitimate interest were regulated in Romania by organic law, respectively the Law of Administrative Litigation no. 554/2004[4].

Professor N. Pavel[5] noted that „the definition of the concept of "fundamental rights" took into account the following: a) fundamental rights are subjective rights of citizens, b) these subjective rights

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[2] 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 Forensic Scientists, Bucharest, 2017, pp. 241.

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

[4] Law on administrative litigation no. 554/2004 in force from 06.01.2005 with the subsequent completions and modifications, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 din 07.12.2004.

[5] N. Pavel, *Drept constituţional şi instituţii politice, Teoria Generală,* Romania of Tomorrow Foundation Publishing House, 2004, p. 70.

are essential for the life, freedom and dignity of citizens, indispensable for the free development of the human personality; c) fundamental rights are established by the Constitution and guaranteed by the Constitution and laws."

Professor G. Iancu[6] mentioned regarding the right of the injured person by a public authority that "Article 52 of the Romanian Constitution constitutes the constitutional basis of the responsibility of public authorities for damages caused to persons by violating their rights and freedoms or a legitimate interest, which means that all other provisions relating to rights and freedoms must be correlated with this constitutional text."

Also, professor G. Iancu specified that "in the category of jurisdictional guarantees for the protection of the citizen against public authorities, whatever they may be, the right of the person injured by such an authority may be included by an administrative act."[7]

Professor I. Muraru, E.S. Tănăsescu[8], established that the right of the person injured by a public authority is "the constitutional basis of the responsibility of the public authorities for the damages caused to the citizens by violating or disregarding their rights and freedoms."

The Universal Declaration of Human Rights of 10.12.1948[9], in Article 8, regulated the right of the injured person by a public authority: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or law."

The Universal Declaration of Human Rights[10] is the source of the concept of fundamental human rights. In the preamble to the declaration, the Member States of the United Nations have assumed the responsibility to recognize the declaration "as a common ideal towards which all peoples and nations should strive, for all persons and all organs of society to strive, with this declaration. always keep in mind, through education and development, to develop respect for these rights and freedoms and to ensure, through progressive national and international measures, their universal and effective recognition and application, both among the peoples of the Member States and in the territories under their jurisdiction."[11]

In our opinion, "the citizen prejudiced in his right does not have the legal obligation to prove the guilt of the civil servant, but only the prejudice of his right by a harmful administrative act. Consequently, the citizen is responsible for the burden of proof in relation to the causal link between the harmful administrative act and the damage actually caused."[12]

According to the author, the institution of administrative litigation "represents the guarantee of the citizen, granted by the state to curb possible abuses of public authorities in order to protect the rights and freedoms of citizens."[13]

The right of the injured person by a public authority, together with the right to petition, both being guaranteed by both the fundamental law of Romania and that of the Republic of Moldova together form the class of guarantee rights.

In our opinion, ensuring good administration can also be done by guaranteeing rights. Thus, the guarantee rights can ensure a good administration. The protection of the citizen's rights before the public authorities is achieved at the constitutional level and through the correlation between the right to petition and the right of the person injured by a public authority.

Good administration is, in our opinion, the way in which the state ensures good governance vis-à-vis citizens, who benefit from the legal protection of fundamental rights as well as through the realization of guarantee rights, which ensure citizens the realization of all fundamental rights in a rule

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[6] G. Iancu, *Drept constituţional şi instituţii politice,* 3rd ed., Ed. C.H. Beck, Bucharest, 2014, p. 294-295.
[7] G. Iancu, *Proceduri Constituționale, Drept procesual constituțional,* Ed. Monitorul Oficial, Bucharest, 2010, p. 133.
[8] I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice,* 15th ed., Vol. I, Ed. C.H. Beck, Bucharest, 2016,
[9] The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948.
[10] Ibid.
[11] Preamble to the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948.
[12] Pavel Cătălin-Radu, *Evoluția istorică a dreptului la bună administrare,* „Revista Studii Juridice Universitare", no. 1-2, Year VI, Chișinău, 2013, Institutul de Cercetări în Domeniul Protecției Drepturilor Omului, p. 233
[13] Ibid.

of law.

Thus, there is a two-way correlation between the legal protection of fundamental rights and the realization of guarantee rights, which guarantees citizens the guarantee of rights and the legal protection of constitutionally guaranteed fundamental rights.

Public authorities have the responsibility to provide public services to citizens, respectively to issue provisions and decisions, and have the obligation to act within a reasonable time.

Good administration presupposes that the services of public authorities respond to the needs of the citizen, based on the rights and freedoms guaranteed by the Constitution.

Good administration for the state represents in our opinion the guarantee of fundamental rights and freedoms provided by Chapter II of the Romanian Constitution entitled Fundamental rights and freedoms guaranteed to Romanian citizens, even if the Constitution does not expressly provide the right to good administration.

2. The jurisprudence of the Romanian Constitutional Court in the field of the right of the person injured by a public authority

The Constitutional Court of Romania considered that the provisions of art. 52 must be correlated with "the constitutional provisions of art. 21, which regulates free access to justice and those of art. 126 para. (6) the first sentence, according to which the judicial control of the administrative acts of the public authorities, by means of the administrative contentious, is guaranteed."[14]

The right of the person injured by a public authority, provided in article 52 of the Romanian Constitution was analyzed in the jurisprudence of the Constitutional Court of Romania, respectively in Decision no. 889 of 16.12.2015[15].

The Constitutional Court of Romania was legally notified and was competent to resolve the exception of unconstitutionality of the sole article point 2 subpoint 4 and of the single article point 4 regarding art. VII of the Government Emergency Ordinance no. 21/2015 of the Law on the approval of the Government Emergency Ordinance no. 21/2015 for the amendment and completion of Law no. 165/2013 regarding the measures for finalizing the process of restitution, in kind or by equivalent, of the buildings abusively taken over during the communist regime in Romania, as well as of art. 3 of the Government Emergency Ordinance no. 94/2000 regarding the restitution of some real estates that belonged to the religious cults in Romania.

The author of the exception of unconstitutionality invoked in its support the provisions of the Romanian Constitution contained in art. 51 regarding the right to petition.

The object of the exception of unconstitutionality was constituted by the provisions of the previously mentioned articles which have the following content:

- Sole article 2 sub-point 4: "The president of the National Commission has an equal vote with the other members and, by derogation from the provisions of the Law on administrative contentious no. 554/2004, with the subsequent amendments and completions, is not assimilated to the quality of leader of the public authority."

- Sole article 4 regarding the introduction of art. VII in the Government Emergency Ordinance no. 21/2015: "It is exempted from the payment of civil fines established pursuant to art. 24 of the Law on administrative litigation no. 554/2004, with the subsequent amendments and completions, the president of the Central Commission for the Establishment of Compensations and, respectively, the president of the National Commission for Real Estate Compensation."

The author of the exception invoked the provisions of art. 1 paragraph 4 of the Constitution regarding the principle of separation of powers and balance of powers within the constitutional democracy, the provisions of art. 16 para. 2 of the Constitution according to which no one is above the law, the provisions of art. 21 of the Constitution regarding the free access to justice, the provisions

[14] Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 from 17.02.2016.
[15] Ibid.

of art. 52 para. 2 regarding the right of the injured person by a public authority and the provisions of art. 124 para. 1 of the Constitution regarding the administration of justice.

Examining the objection of unconstitutionality, the Constitutional Court of Romania found that, according to art. 52 of the Constitution, "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 a request within the legal term, is entitled to obtain recognition of the claimed right or interest legitimacy, annulment of the act and reparation of the damage. The Court considers that this constitutional text must be correlated with the constitutional provisions of art. 21, which regulates free access to justice and those of art. 126 para. (6) the first sentence, according to which the judicial control of the administrative acts of the public authorities, by means of the administrative contentious, is guaranteed."[16]

The Constitutional Court of Romania, in resolving the exception, held that in the judicial stage where the claimed right or legitimate interest is recognized, the injured person must have all the legal prerogatives and all the constitutional guarantees guaranteed by art. 21 para. 3, and art. 6 the right to a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms. The right to a fair trial must be interpreted in the light of the principle of the rule of law, which presupposes the existence of an effective legal remedy for civil rights (Judgment of 12 November 2002 in *Běleš and Others v. Czech Republic*, paragraph 49).

At the same time, the Constitutional Court considered that the right of access to court must be "concrete and effective". The effectiveness of the right of access requires that an individual "have a clear and concrete possibility to challenge an act which constitutes an interference with his rights" (Judgment of 4 December 1995 in *Bellet v. France*, paragraphs 36 and 38). Thus, the effectiveness of the right of access to a court requires that its exercise not be affected by the existence of legal or factual obstacles or impediments, such as to call into question its very substance.[17]

Moreover, the Constitutional Court held that "in the context of the constitutional regulation of the right of persons injured by a public authority and the guarantees inherent in this right, it is essential to establish the passive procedural quality of subjects of law issuing acts of public power, as it is one of the conditions. of admissibility of the action in the administrative contentious. Thus, the Court notes that art. 2 para. (1) lit. b) of the Law on administrative litigation no. 554/2004 defines "public authority" as any state body or administrative-territorial unit that acts, in a regime of public power, to satisfy a legitimate public interest."[18]

Analyzing the exception of unconstitutionality, the Constitutional Court found that regarding the notion of "leader of the public authority", the Court observes that, "although this is not defined by the provisions of Law no. 554/2004, is used in the content of art. 13 para. 4) and art. 24 para. 3) regarding the possibility of amending the head of the public authority in case of non-execution of the decisions and in art. 26 regarding his recourse action against those guilty of non-execution of the judgment. In view of this, the Court considers that this phrase must be interpreted in conjunction with the entire regulation of administrative litigation. Thus, given that the public authority within the meaning of Law no. 554/2004 is represented by any entity that has the capacity of administrative law to issue administrative acts in the exercise of prerogatives of public power or a public service, its head can only be that person who, even if it is not defined as such by law, has the capacity and the legal obligation to take all the necessary measures underlying the issuance of the administrative act and without which it cannot be issued. To consider otherwise would mean that, although an entity is considered a public authority within the meaning of Law no. 554/2004, being able to have the passive procedural quality in a litigation, the court would be forced to apply only a part of the provisions of the act that regulates the matter of the administrative contentious, being able, being, consequently, in the impossibility to rule on the case before the court."[19]

With regard to the capacity of head of a public authority, the Constitutional Court noted that it "determines the person in this position, the obligation to represent the interests of that entity in its

[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.

relations with natural or legal persons of public or private law, as well as the legal representation of the public authority or institution in which it carries out its activity. The Court notes that, according to art. 13 para. (1) of Law no. 554/2004, upon receipt of the request, the administrative contentious court shall order the summoning of the parties and may request the authority whose act is challenged to communicate that act as a matter of urgency, together with all the documentation underlying its issuance, as well as any other necessary works. for solving the case. The fact that in court, the respective entity is concretely represented by a person, other than the head of the public authority, is not likely to change the reasoning shown above, such a representation being made within the competences established by the head of the public authority. The latter, precisely by virtue of his quality, is a person who decides on the formulation of a possible request for a summons, substantive or procedural defenses, waiver of the trial, acquittal of the plaintiff's claims, etc. Subsequently, after the pronouncement of the decision, the head of the public authority is the first called to take the necessary measures for its execution."[20]

The Court also notes that the contested legal text derogated from the provisions of the Law on Administrative Litigation no. 554/2004 in the sense that the President of the National Commission for Real Estate Compensation is not assimilated to the capacity of head of public authority, and regarding the procedural framework, "the European Court of Human Rights sanctioned the states concerned when the procedural rules prevented certain subjects from the right to have a procedural capacity [Judgment of 27 August 1991 in *Philis v. Greece*, paragraph 65; Judgment of 14 December 2006, in *Lupaş and Others v. Romania* (no. 1), paragraphs 64 to 67 and 75], and, on the other hand, with regard to the inability of the courts to establish concretely the passive procedural capacity of the defendant, the European court noted that access to domestic remedies only for the action to be dismissed as a result of the defendant's interpretation of passive procedural capacity , by reference to that of one of its departments or executive bodies, may raise an issue from the perspective of art. 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the right to a fair trial. The European Court held that the degree of access provided by national law and its interpretation by national courts must also be sufficient to ensure the individual's "right to a court", given the principle of the rule of law in a society. democratic. For the right of access to be effective, a person must have the obvious possibility to effectively challenge an act that violates his or her rights (Judgment of 26 July 2011 in *Georgel and Georgeta Stoicescu v. Romania*, para. 74)."[21]

Also, regarding the procedural framework, the Constitutional Court considered that: "by affecting the procedural framework from the perspective of passive procedural quality, the criticized text prevents the entitled persons from having access to an effective way to capitalize on their rights. This violates the right of injured persons to a right or a legitimate interest, by a public authority, by an administrative act or by the failure to resolve within the legal term of a request to have effective access to the recognition of the claimed right or legitimate interest, annulment of the act and reparation of the damage, enshrined in the constitutional provisions of art. 52 para. (1) in conjunction with those of art. 21 and art. 126 para. (6) first sentence of the Basic Law."[22]

The Constitutional Court held that "art. 24 of Law no. 554/2004 provides that, at the request of the creditor, within the limitation period of the right to obtain enforcement, the enforcement court, by final decision given with the summoning of the parties, applies to the head of the public authority or, as the case may be, to the obligated person a fine 20% of the minimum gross salary per economy per day of delay, which is made income to the state budget, and the plaintiff is granted penalties, under the conditions of art. 905 of the Code of Civil Procedure. Thus, the enforcement procedure established by that article applies only if, by the operative part of the judgment, the public authority is obliged to conclude, replace or amend the administrative act, to issue another document or to carry out certain administrative operations. obligations, it is therefore a question of obligations to be performed which can be fulfilled only by the public authority, by issuing an administrative act under

[20] Ibid.
[21] Ibid.
[22] Ibid.

the signature of its leader."[23]

In this sense, the Constitutional Court held that "by Decision no. 914 of June 23, 2009, published in the Official Gazette of Romania, Part I, no. 544 of August 5, 2009, ruled that the text of art. 24 of Law no. 554/2004 introduces a means of coercing the leaders of public authorities in order to execute court decisions, giving, once again, effectiveness in terms of their implementation. The comminatory fines established in art. 24 para. 2 of the Law on administrative litigation no. 554/2004 represents a pecuniary procedural sanction applied by the court in order to ensure the execution of the decision. The legislator considered it necessary to establish such a means of coercion, in order to give effectiveness to the institution of administrative litigation, whose purpose would be illusory in the absence of a sanction for voluntary non-enforcement of judgments in this matter (Decision no. 920 of 23 June 2009, published in the Official Gazette of Romania, Part I, No. 575 of August 18, 2009). The application of the fine provided by the criticized text of law is the consequence of the culpable non-execution of a final and irrevocable court decision. It intervenes by virtue of the law, and the amount of the fine is determined clearly and unequivocally by the criticized norm itself (Decision no. 1,566 of 19 November 2009, published in the Official Gazette of Romania, Part I, no. 26 of 13 January 2010)." [24]

In conclusion, the Constitutional Court found that "the sole article point 2 subpoint 4 of the Law on the approval of the Government Emergency Ordinance no. 21/2015 violates the right of the injured person in a right or in a legitimate interest by a public authority to a fair trial provided by art. 21 para. (3) of the Constitution and of art. 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the legislator failing to fulfill its obligation to take legislative measures to enable the enforcement of judgments. The Court notes that, in accordance with its own jurisprudence and that of the European Court of Human Rights, it is the task of the legislator to find adequate means to ensure the effectiveness of judgments by adopting legislative measures to reduce the duration and simplify the enforcement procedure. forced, in compliance with the constitutional requirements of the rule of law. Or, in the present situation, by adopting the criticized regulation, the legislator intervened in the civil process, in the phase of execution of the decision pronounced by a court, lacking legal effects the jurisdictional act that has *res judicata* authority. Preventing the execution of a court decision, the legislator disregards the principle of separation and balance of powers in the state, enshrined in art. 1 para. (4) of the Constitution, which implies in the task of the state authorities the obligation to exercise their legal and constitutional attributions within and within the limits provided by the Fundamental Law. By adopting the criticized norms, the legislative authority acted ultra vires, exceeding its constitutional powers to the detriment of the judicial authority."[25]

For the reasons mentioned in decision no. 889/2015, the Constitutional Court of Romania decided to admit the exception of unconstitutionality formulated by the President of Romania and found that the sole article point 2 subpoint 4 and the sole article point 4 regarding art. VII of the Government Emergency Ordinance no. 21/2015 of the Law on the approval of the Government Emergency Ordinance no. 21/2015 for the amendment and completion of Law no. 165/2013 regarding the measures for finalizing the process of restitution, in kind or by equivalent, of the buildings abusively taken over during the communist regime in Romania, as well as art. 3 of the Government Emergency Ordinance no. 94/2000 regarding the restitution of some real estates that belonged to the religious cults in Romania are unconstitutional.

The content of the right of the injured person by a public authority was also analyzed in the decision of the Romanian Constitutional Court no. 694 of 20.10.2015[26].

The Constitutional Court of Romania was legally notified and was competent to resolve the exception of unconstitutionality of the provisions of art. 124 para. 1 related to those of art. 70 of the Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code.

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[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] Decision of the Constitutional Court no. 694/20.10.2015, published in the Official Gazette of Romania no. 948 of 22.12.2015.

The author of the exception of unconstitutionality invoked in its support the violation of the injured person's right to repair the damage resulting from an administrative-fiscal act annulled by an irrevocable court decision, the contested law limiting the injured party's fundamental right to interest, after the expiration of 45 days of solving the request for refund of the amounts illegally collected. Thus, a taxpayer who has challenged an administrative act by an action for annulment and who has already paid the tax obligations imposed by that act has been limited in his right to claim a refund of the amounts already paid under the unlawful act once the application for annulment has been made, because there is this procedure for refunding the amounts illegally collected.

The provisions criticized were the following:

- Article 124 para. 1 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished: "(1) For the amounts to be reimbursed or reimbursed from the budget, the taxpayers have the right to interest from the day following the expiration of the term provided in art. 117 par. (2) and (21) or to art. 70, as the case may be, until the date of extinction by any of the modalities provided by law. Interest is granted at the request of taxpayers".

- Article 70 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code: "(1) The requests submitted by the taxpayer according to the present code shall be solved by the fiscal body within 45 days from the registration. (2) In cases where, for the resolution of the request, additional information relevant for the decision is required, this period shall be extended by the period between the date of the request and the date of receipt of the requested information."

The author of the exception showed that the criticized legal provisions violate the constitutional provisions contained in art. 44 para. (1) and (3) regarding the property right and in art. 52 para. (1) and (2) on the right of the injured person by a public authority.

Examining the objection of unconstitutionality, the Romanian Constitutional Court found that its author formulates both criticisms of extrinsic and intrinsic unconstitutionality.

The extrinsic criticisms refer to art. 52 of the Constitution, the author of the exception of unconstitutionality considered that: "this matter, which concerns the right to compensation for damage, by granting an interest, must be done through an organic law, and not through a normative act that can only have the legal force of an ordinary law, respectively an ordinance of the Government. The Court finds that those conditions and limits referred to in art. 52 para. (2) are regulated by the Law on administrative litigation no. 554/2004 which constitutes the general headquarters of the matter. The provisions of art. 52 para. (1) of the Constitution are resumed in art. 1 para. (1) of the mentioned law. Also, art. 5 para. (1) and (2) of Law no. 554/2004, regarding the acts that cannot be challenged in the administrative contentious, presents examples of the limitation of the complex right provided by art. 52 para. (1) of the Constitution. The provisions of art. 10 regarding the competent court, art. 11 regarding the term for introducing the action and of art. 19 on the limitation period for damages are examples of regulating the conditions for exercising this right."[27]

The Constitutional Court held that, according to art. 18 para. (3), in case of solving the request from art. 8 para. (1), the court will also decide on the compensations for material and moral damages caused, if the plaintiff has requested this. Moreover, the Court also notes that according to the provisions of art. 28 para. (1) of Law no. 554/2004, the provisions of this law are supplemented with the provisions of the Civil Code and those of the Code of Civil Procedure, insofar as they are not compatible with the specifics of power relations between public authorities and injured persons in their legitimate rights or interests. The Court concludes from the above that the interested party may apply to the administrative court, including the granting of interest.

Compared to the interpretation of the aforementioned legal provisions, the Court found that "the criticized legal provisions, as conceived by the legislator, are norms whose main purpose is to oblige the tax authorities to quickly fulfill their obligations, but also to recover the unrealized benefit, in subsidiary. Thus, the Court notes that these aspects do not concern the conditions and limits of exercising the right to reparation of the damage referred to in art. 52 of the Constitution, so that it was not necessary to regulate them by organic law. Therefore, the extrinsic criticism formulated by the

[27] Ibid.

author of the exception of unconstitutionality cannot be retained."[28]

Regarding the criticisms of intrinsic unconstitutionality that relate to the provisions of art. 44 para. (1) and (3) on the right to private property, the Constitutional Court found that these criticisms are well-founded.

In conclusion, the Constitutional Court held that "the provisions of art. 124 para. (1) related to those of art. 70 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, although it guarantees the granting of an interest for non-fulfillment of the refund obligation, does not fully cover the damage that the taxpayer may suffer for the fact that he agreed to voluntarily execute a fiscal obligation that he considered illegal, which is subsequently ascertained by a decision of a court or by the fiscal body itself. In this way there is a diminution of the taxpayer's patrimony, through an action of the state, thus affecting the right of private property."[29]

For the reasons mentioned in decision no. 694/2015, the Constitutional Court of Romania decided to admit the exception of unconstitutionality formulated by the Company "Rolast" - S.A. from Pitesti and found that the provisions of art. 124 para. (1) related to those of art. 70 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code are unconstitutional.

Also, the principle of the right of the person injured by a public authority provided in article 52 was analyzed in the decision of the Constitutional Court of Romania no. 536 of April 28, 2011[30].

The Constitutional Court of Romania was legally notified and was competent to resolve the exception of unconstitutionality of the provisions of art. 44 para. (3) of Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code.

The author of the exception of unconstitutionality invoked in its support the provisions of the Romanian Constitution contained in art. 21 on free access to justice, art. 24 which guarantees the right to defense and to art. 52 regarding the right of the person injured by a public authority.

The object of the exception of unconstitutionality was constituted by the provisions of art. 44 para. (3) of Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished in the Official Gazette of Romania, Part I, no. 513 of July 31, 2007, which had the following content:

- Article 44 para. (3): "The communication through advertising is made by posting, at the same time, at the headquarters of the issuing fiscal body and on the website of the National Agency for Fiscal Administration, an announcement stating that the fiscal administrative act has been issued on behalf of the taxpayer. In the case of administrative acts issued by the fiscal bodies provided in art. 35, the display is made, at the same time, at their headquarters and on the website of the respective local public administration authority, in the absence of its own website, the advertising is made on the website of the county council. In all cases, the fiscal administrative act shall be deemed to have been communicated within 15 days from the date of posting the notice."

Examining the exception of unconstitutionality, the Romanian Constitutional Court found that "the text of the law that forms its object refers to the communication by publicity of fiscal administrative acts, namely by posting, simultaneously, at the headquarters of the issuing fiscal body and, as the case may be, on the website of the National Agency for Fiscal Administration or of the local public administration authority or of the respective county council, of an announcement stating that the fiscal administrative act has been issued in the name of the taxpayer."[31]

The Constitutional Court of Romania also noted that "this is one of the four modalities listed in art. 44 para. (2) letter a)-d) of Government Ordinance no. 92/2003 by which the legislator established that the fiscal administrative acts can be communicated, as follows: a) by presenting the taxpayer at the headquarters of the issuing fiscal body and receiving the fiscal administrative act by him under signature, the date of communication being the date of signing the act; b) by the submission, under signature, of the fiscal administrative act by the empowered persons of the fiscal body, according to the law, the date of communication being the date of the signature submission of the act; c) by post, at the taxpayer's fiscal domicile, by registered letter with acknowledgment of

[28] Ibid.
[29] Ibid.
[30] Decision of the Constitutional Court no. 536/28.04.2011, published in the Official Gazette of Romania no. 482 of 07.07.2011.
[31] Ibid.

receipt, as well as by other means, such as fax, e-mail, if the transmission of the text of the fiscal administrative act and confirmation of its receipt is ensured; d) through advertising."[32]

In conclusion, the Constitutional Court ruled that in the case of fiscal administrative acts, their communication is fulfilled through publicity and in the hypothesis in which the taxpayer's fiscal domicile is known, but the communication could not be made by the other means provided by the mentioned text. The courts will have to examine, however, whether this communication through publicity was fulfilled only as a result of the impossibility of carrying out the communication procedure through the other modalities, in the order in which they are listed in art. 44 para. (2) letters a)-c). The interpretation of the provisions of art. 44 para. (2) of the Fiscal Procedure Code according to which the enumeration contained in it constitutes the order of priority for the realization of the modalities of communication of the fiscal administrative acts, at the observance of which the courts must watch, is the only one that can remove the unconstitutionality suffers from the lack of an express mention in this regard.

For the reasons mentioned in decision no. 694/2015, the Constitutional Court of Romania decided to admit the exception of unconstitutionality formulated by the Court of Constanţa - Civil Section and finds that the provisions of art. 44 para. (3) of Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code are unconstitutional insofar as they are interpreted in the sense that the issuing fiscal body may proceed to the communication of the fiscal administrative act through publicity, with the unjustified removal of the order of the communication modalities provided in art. 44 para. (2) letters a)-d) of the same ordinance.

3. Jurisprudence of the Constitutional Court of the Republic of Moldova in the field of the right of the injured person by a public authority

Regarding the jurisprudence of the Constitutional Court of the Republic of Moldova regarding art. 53 of the right of the injured person by a public authority, the decision of the Constitutional Court of the Republic of Moldova no. 37 of July 5, 2001[33].

The Constitutional Court of the Republic of Moldova was legally notified and was competent to submit to the constitutionality control the content of art. 43 of the Budget Law for 2001 no. 1392-XIV, adopted on November 30, 2000 (hereinafter - the Budget Law for 2001).

The author of the notification motivated that the contested provisions "directly restrict the right of the injured person by a public authority to repair the damage, as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and art. 53 of the Constitution of the Republic of Moldova."[34]

Examining the referral, the Constitutional Court of the Republic of Moldova noted that "by this rule the Parliament established the general way of repairing damages caused to individuals or legal entities through illegal actions of state subjects such as public administration authorities, law enforcement and control bodies Moldova. According to the contested provisions, the reparation of damages will be carried out at the expense of the estimates of expenses of the respective bodies, with the right of recourse against the guilty persons. At the same time, the deadline for such repairs was set, which will run on January 1, 2001."[35]

The Court also noted that "The recognition of the claimed right, the annulment of the act and the reparation of the damage are regulated by the Law of administrative contentious no. 793-XIV of February 10, 2000 (Official Gazette, 2000, no. 57-58, art. 375) (hereinafter - Law on administrative litigation) and Law no. 1545-XIII of 25 February 1998 "On the manner of repairing the damage caused by the illicit actions of the criminal investigation and preliminary investigation bodies, of the

[32] Ibid.
[33] Decision of the Constitutional Court of the Republic of Moldova no. 37 of July 5, 2001 for the control of the constitutionality of the provisions of art. 43 of the Budget Law for 2001 no. 1392-XIV of November 30, 2000, published in the Official Gazette of the Republic of Moldova no. 81/30 of 20 July 2001.
[34] Ibid.
[35] Ibid.

prosecutor's office and of the courts" (Official Gazette, 1998, no. 50-51, art. 379) (hereinafter - Law No. 1545-XIII). According to art. 1 para. (2) of the Law on Administrative Litigation, any person who considers himself injured in a right of his, recognized by law, by a public authority, by an administrative act or by not resolving a request within the legal term, may address the court competent administrative litigation to obtain the annulment of the act, the recognition of the claimed right and the reparation of the damage caused to him. The dispute generated either by an administrative act or by the failure to resolve within the legal term of a request regarding the recognition of a right recognized by law, in which at least one of the parties is a public authority or an official of this authority, is an administrative litigation liable settlement by the competent administrative contentious court. For the purposes of the Law on Administrative Litigation, a public authority is considered any organizational structure or body that acts in public power in order to achieve a public interest. Persons of private law who exercise public power attributions or use the public domain are assimilated to public authorities, being empowered by law to provide a service of public interest (art. 2).”[36]

Analyzing the notification, the Court observed that “having, according to art. 20 para. (1) of the Constitution, the right to effective satisfaction from the competent courts against acts that violate his rights, freedoms and legitimate interests, the person who considers himself harmed in a right of his, recognized by law, by an administrative act and not is satisfied with the answer received to the prior request or has not received any answer within the term provided by law, is entitled to refer to the administrative court competent to annul, in whole or in part, the act and repair the damage caused, including moral damage [art. 16 paragraph (1) of the Law on Administrative Litigation]. In case of admitting the action, the administrative contentious court decides, upon request, also on the reparation of the material and moral damages caused by the illegal administrative act or by the non-examination within the legal term of the preliminary request. The amount of the moral damage is established by the administrative contentious court independent of the material damage, depending on the nature of the moral or physical suffering caused, the circumstances and the form in which they occurred, the gravity of the consequences, the degree of guilt of the defendant, and other circumstances of this kind [art. 25 paragraphs (3) and (4) of the Law on Administrative Litigation].”[37]

The Court noted that “In accordance with the provisions of Law no. 1545-XIII, the moral and material damage caused by the illicit actions of the criminal investigation and preliminary investigation bodies, of the prosecutor's office and of the courts is reparable. The said law provides for the cases in which the right to reparation intervenes, establishes the reparable damage and the amount of reparable amounts, the procedure for filing, examining and satisfying the claim for reparation, the manner of execution of the decision (decision) on reparation, grounds, cases and the conditions for submitting to the guilty persons the request for recourse for reparation of the damage. Repair of the damage, according to art. 10 of Law no. 1545-XIII, is carried out from the account of the state budget, and if the damage was caused by the criminal investigation body maintained from the local budget - from the account of this budget. The pension and allowance, the payment of which has been stopped as a result of illegal detention and detention, shall be compensated from the social fund budget through its territorial body at the place of residence of the natural person. The reparation of the damage caused to the natural or legal person by the criminal investigation and preliminary investigation bodies, the prosecutor's office and the courts is carried out in the manner and form expressly established by Law no. 1545-XIII (art. 10, art. 14) depending on the damage caused (wealth, money, housing), depending on the bodies in charge of executing the decision (decision) of the court on recovering the damage (central, local financial bodies, authorities public administration, etc.). According to art. 17 of Law no. 1545-XIII, after repairing the damage caused by the illicit actions of the criminal investigation and preliminary investigation bodies, of the state prosecutor's office and of the courts, the local public administration authorities are obliged to submit to the guilty persons the request for reparation of the damage: a) in full - in the case when the fault of the persons with positions of responsibility is proved by a final sentence; b) partially - on the basis and under the conditions

[36] Ibid.
[37] Ibid.

established by the legislation. The right of the state, of the local public administration authorities to submit a request in regress to the guilty persons also arises based on art. 20 and 53 para. (1) of the Constitution, in case the mentioned subjects were harmed. Analyzing the provisions of art. 43 of the Budget Law for 2001, the Court observes that they establish rules for reparation of damage different from those established by the Law on Administrative Litigation and Law no. 1545-XIII."[38]

In conclusion, the Constitutional Court revealed that "the exercise of the person's constitutional right to reparation for damages caused by a public authority is circumscribed by the constitutional principles of universality, equality and free access to justice. By virtue of these principles, the citizens of the Republic of Moldova enjoy the rights and freedoms enshrined in the Constitution and other laws and have the obligations provided by them; respect and protection of the person is a primary duty of the state; everyone has the right to an effective remedy by the competent courts against acts which violate his or her rights, freedoms and legitimate interests; no law may restrict free access to justice [art. 15, art. 16 para. (1), art. 20 of the Constitution]. Contrary to these constitutional principles, art. 43 of the Budget Law for 2001 places the right of the injured person by a public authority to repair the damage according to the imperative depending on the source from which this repair will be performed, namely from the expense estimates of the respective bodies. The provisions of this article are also unconstitutional for the reason that the Budget Law for 2001 has a limited action in time. Or, art. 53 of the Constitution stipulates that the person injured by a public authority is entitled to obtain unconditional reparation, and not only during the budget year. At the same time, it should be mentioned that the provisions of the budgetary law are not applicable to the patrimonial relations regarding the reparation of the damage caused to the person. According to art. 1 of Law no. 847-XIII of May 24, 1996 "On the budgetary system and the budgetary process" (Official Gazette 2000, no. 160-162, art. 1199), the budget executor is considered the head of the institution empowered with the right to make expenditures in accordance with the approved allocations. The monthly distribution of the approved allocations is exercised according to the financing plan that allows the opening of the treasury accounts and the execution of the expenses by the budget executor. However, the Law on the budget for 2001 does not include concrete allocations, intended to cover the damages caused to the persons injured by the public authorities. Any person who is the victim of an arrest or detention in conditions contrary to the provisions of art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, has the right to reparations. Noting the declarative character of the provisions of art. 43 of the Budget Law for 2001, the Constitutional Court considers them inconsistent with this Convention and art. 4, art. 15, art. 16 para. (1), art. 20 of the Constitution."

For the reasons mentioned in decision no. 37/2001, the Constitutional Court of the Republic of Moldova declared unconstitutional the provisions of art. 43 of the Budget Law for 2001 no. 1392-XIV of November 30, 2000.

Also, the principle of the right of the injured person by a public authority provided in Article 53 of the Constitution of the Republic of Moldova, was analyzed in the jurisprudence of the Constitutional Court of the Republic of Moldova, respectively in the Decision of the Constitutional Court of the Republic of Moldova no. 46 of November 21, 2002[**39**].

Thus, the Constitutional Court of the Republic of Moldova was legally notified and was competent to submit to the constitutionality control the content of some provisions of the Law on Administrative Litigation no. 793-XIV of February 10, 2000[40] with the amendments and completions operated by laws no. 726-XV of December 7, 2001[41] and no. 833-XV of February 7, 2002.

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[38] Ibid.

[39] Decision of the Constitutional Court of the Republic of Moldova no. 46 of November 21, 2002 for the control of the constitutionality of some provisions of the Law on administrative litigation no. 793-XIV of February 10, 2000 with the amendments and completions operated by Law no. 726-XV of December 7, 2001 and Law no. 833-XV of February 7, 2002, published in the Official Gazette of the Republic of Moldova no. 170-172/30 of 13 December 2002.

[40] Law no. 793 of February 10, 2000 of the administrative contentious, published in the Official Gazette of the Republic of Moldova no. 57-58 / 375 of 18 May 2000.

[41] Law no. 726 of December 7, 2001 for the amendment and completion of the Law on litigation administrative no. 793-XIV of February 10, 2000, published in the Official Gazette of the Republic of Moldova no. 152-154/1229 of 13 December 2001.

Examining the notification, the Constitutional Court of the Republic of Moldova held that "by Law no. 833-XV, art. 4 letter d) of Law no. 793-XIV was finally supplemented with the text "including the acts of application of disciplinary sanctions and dismissal of military personnel and persons with military status", which, like military command acts, cannot be challenged in administrative disputes. Analyzing the provision of art. 4 letter d) of the Law no. 793-XIV, completed by Law no. 833-XV, the Constitutional Court reveals that it contains two different notions, namely: "acts of military command" and "acts of military authorities". According to the general theory of law, acts of military command concern the command of the troop, either in time of peace or in time of war. These documents are issued by military bodies in order to ensure order and discipline in military units by military personnel. Being issued in connection with the military service and duties within the service, these documents, according to art. 4 letter d) of Law no. 793-XIV, cannot be attacked through administrative litigation. The Constitutional Court considers that the administrative contentious courts are competent to verify the legality of the administrative acts issued by the military authorities, provided that these acts do not meet the features of the military command acts. The Republic of Moldova is a state governed by the rule of law, democracy, in which human dignity, rights and freedoms, free development of the human personality, justice and political pluralism are supreme values and are guaranteed [art. 1 para. (3) of the Constitution]. The citizens of the Republic of Moldova enjoy the rights and freedoms enshrined in the Constitution and other laws and have the obligations provided by them (art. 15 of the Constitution). Respect and protection of the person is a primary duty of the state. All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin (art. 16 of the Constitution). Everyone has the right to an effective remedy by the competent national tribunals for acts violating his or her rights, freedoms and legitimate interests. No law can restrict access to justice (art. 20 of the Constitution). The person injured in a 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 of the act and reparation of the damage [art. 53 para. (1) of the Constitution]. The exercise of rights and freedoms may not be subject to restrictions other than those provided by law, which correspond to the unanimously recognized norms of international law and are necessary in the interests of national security, territorial integrity, economic welfare, public order, in order to prevent mass disturbances and crimes, the protection of the rights, freedoms and dignity of others, the prevention of the disclosure of confidential information or the guarantee of the authority and impartiality of justice. The restriction must be proportionate to the situation that determined it and cannot affect the existence of the right or freedom (art. 54 of the Constitution). Everyone has the right to a fair trial in violation of his or her civil rights and obligations (Article 6 of the ECHR)."[42]

The Court also noted that "since the acts of application of disciplinary sanctions and dismissal of military personnel and persons with military status are administrative acts of authority similar to administrative acts of authority adopted by other public administrative services and are civil, they are subject to examination by the administrative courts. The legislature, by completing the operation in art. 4 letter d) of Law no. 793-XIV, exempted from the judicial control in the administrative contentious the aforementioned administrative acts, but maintained the military and persons with military status as subjects with the right of notification in the administrative contentious (art. 5 of Law no. 793-XIV). At the same time, the Court mentions that there is a discrepancy between the provisions of Law no. 833-XV, by which art. 4 letter d), and the provisions of other laws in force. Depriving the military of the right to appeal in administrative litigation for annulment of the administrative act, recognition of the claimed right and reparation of damage, the legislature maintained the right of the military and persons with military status to go to military courts (art. 28 of the Code of civil procedure) and in the specialized courts [art. 115 para. (2) of the Constitution,

[42] Decision of the Constitutional Court of the Republic of Moldova no. 46 of November 21, 2002 for the control of the constitutionality of some provisions of the Law on administrative litigation no. 793-XIV of February 10, 2000 with the amendments and completions operated by Law no. 726-XV of December 7, 2001 and Law no. 833-XV of February 7, 2002, published in the Official Gazette of the Republic of Moldova no. 170-172/30 of 13 December 2002.

Law no. 836-XIII on the system of military courts]. For the above reasons, the Constitutional Court qualifies the phrase "including the acts of application of disciplinary sanctions and dismissal of military personnel and persons with military status" from art. 4 letter d) of Law no. 793-XIV as unconstitutional."[43]

Analyzing the referral, the Court observed that "art. 16 para. (1) of the Law no. 793-XIV in the previous wording provided that the person who considers himself injured in his right, recognized by law, by an administrative act and is not satisfied with the answer received to the prior request or did not receive any answer within the term provided by law, is entitled to notify the administrative contentious court competent for the annulment, in whole or in part, of the respective act and the reparation of the caused damage, including the moral damage. By the Law no. 726-XV, the text "including moral damage" was excluded from this article. The Constitution of the Republic of Moldova, in Chapter II, lists the fundamental rights and freedoms, and by art. 53 para. (1) states that 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 of the act and reparation of the damage. The Court reveals that, ruling the possibility of repairing the damage, the constituent legislator took into account both the material damage and the moral damage, therefore the argument invoked in the notification is unfounded."[44]

In conclusion, the Constitutional Court found that "by the Law no. 833-XV, in art. 25 para. (3) of the Law no. 793-XIV, the words "material and moral damage" were replaced by the words "material damage", and paragraph 4 of this article was excluded. In the light of the constitutional provisions of art. 53 para. (1) above, the Law no. 793-XIV, through art. 1, stipulates that "administrative litigation as a legal institution aims at counteracting abuses and excesses of power of public authorities, defending the rights of the person in the spirit of the law, and the person who considers himself injured in his right is entitled to obtain recognition of the claimed right and repairing the damage". According to this law, non-pecuniary moral damage is a moral or physical suffering, caused by actions that threaten personal non-patrimonial rights (right to name, copyright, etc.) or intangible assets of the citizen (life, health, dignity of the person, professional reputation, inviolability of privacy, etc.). The Civil Code of the Republic of Moldova, adopted by the Law no. 1107-XV of June 6, 2002 and which will enter into force on January 1, 2003, through art. 11 letters g) and i), establishes that the defense of the civil right is made by repairing the damages, including the moral damage. By substituting in art. 25 para. (3) of the law of the phrase "material and moral damages" with the phrase "material damage" and the exclusion of para. 4 of this article, the provisions contained in art. 53 para. (1) of the Constitution, which stipulates imperatively the recovery of the damage: material and moral. For the above reasons, the Court considers as unconstitutional the amendments made in art. 25 of the Law no. 793-XIV by the Law no. 833-XV. By the Law no. 726-XV of art. 21, of the Law no. 793-XIV paragraphs (1), (2) and (3) were excluded, and art. 32 para. (3) of the same law was stated in the following wording: "In case of non-execution of the decision in time, the head of the public authority in charge of its execution may be held liable in accordance with the provisions of applicable law." By the Law no. 833-XV, in Law no. 793-XIV the following modifications were operated: at art. 14 para. (1) the text "6 months from the date of notification of the act" has been replaced by the text "30 days from the date of communication of the act"; in para. (3) the text "6 months" has been replaced by the text "30 days"; the art. 16 para. (3) the text "the plaintiff is exempted from paying the state tax" was replaced by the text "the plaintiff natural person pays the state tax in the amount of a minimum wage, and the plaintiff legal person - in the amount of 20 minimum wages"; art. 24 para. (2) was finally supplemented with the text "and in case it is impossible to judge the case in the absence of the plaintiff, the administrative contentious court will remove the application from the list under the conditions of the Code of Civil Procedure". Analyzing the amendments mentioned above, the Constitutional Court reveals that the legislator has implemented the constitutional provisions contained in art. 72 para. (3) letter e) regarding the regulation by organic law of the

[43] Ibid.
[44] Ibid.

procedure. Or, being of a procedural nature, these amendments do not restrict the free access to justice and do not violate the provisions of art. 20 of the Constitution."[45]

For the reasons mentioned in decision no. 6/2011, the Constitutional Court ruled: "1. Recognizes constitutional: a) points 1, 3, 4, 5, 6, 7 and 8, sole article, of the Law no. 726-XV of December 7, 2001 for the amendment and completion of the Law on administrative litigation, through which amendments were made in: art. 4 letters a) and c); art. 10 letter b); art. 13 para. (1); art. 16 para. (1); art. 21; art. 30 para. (4) and art. 32 para. (3) of the Law on administrative litigation no. 793-XIV of February 10, 2000; b) points 3, 4 and 5, sole article, of Law no. 833-XV of February 7, 2002 for the amendment and completion of the Law on administrative litigation, through which amendments were made in: art. 14 para. (1) and para. (3); art. 16 para. (3) and art. 24 para. (2) of the Law on administrative litigation no. 793-XIV of February 10, 2000. 2. Declares unconstitutional: a) the phrase "including collective property" from art. 4 letter g) of the Law on administrative litigation no. 793-XIV of February 10, 2000 in the wording of Law no. 726-XV of December 7, 2001 for the amendment and completion of the Law on administrative contentious, point 1, sole article; b) the phrase "including the acts of application of disciplinary sanctions and dismissal of military personnel and persons with military status" from art. 4 letter d) of the Law on administrative litigation no. 793-XIV of February 10, 2000 in the wording of Law no. 833-XV of February 7, 2002 for the amendment and completion of the Law on administrative contentious, point 1, sole article; c) point 6, sole article, of Law no. 833-XV of February 7, 2002, by which in art. 25 para. (3) of the Law on administrative litigation no. 793-XIV the words "material and moral damages" are replaced by the phrase "material damage"; d) point 6, sole article, of Law no. 833-XV of February 7, 2002 for the amendment and completion of the Law on administrative contentious, by which paragraph (4) of art. 25 of the Law on administrative litigation no. 793-XIV of February 10, 2000."[46]

The right of the person injured by a public authority provided in article 53 of the Constitution of the Republic of Moldova, was also analyzed in the jurisprudence of the Constitutional Court of the Republic of Moldova, respectively in the Decision of the Constitutional Court of the Republic of Moldova no. 18 of December 11, 2012[47].

The Constitutional Court of the Republic of Moldova was legally notified and was competent to submit to the control of the constitutionality of some provisions of the Law no. 793-XIV of February 10, 2000 regarding the administrative contentious[48].

The author of the notification considered that the "phrases" in the cases expressly provided by law" from the article 16 par. (2), "30 days" of Article 17 para. (1) and "if the law does not provide for the prior procedure" of Article 17 para. (1) letter c) of the Law on Administrative Litigation regarding the mandatory procedure prior to the submission of the summons contravene the provisions of Articles 1, 6, 20, 53, 54, 66, 114, 115, 116 of the Constitution of the Republic of Moldova. Also, the author of the notification challenges the constitutionality of article 21 para. (3) of the Law on Administrative Litigation, which provides for the impossibility of suspending the execution of the decisions of the National Commission of the Financial Market and the decisions of the Court of Accounts until the final settlement of the case, considering it contrary to Articles 6, 20, 26, 66 and 114 of the Constitution"[49].

Examining the notification, the Constitutional Court of the Republic of Moldova held that "By Decision no. 6 of 6 February 2001, the Court stated: "[...] The fundamental principle underlying the organization and functioning of the state apparatus is the separation of legislative, executive and judicial powers. Each of these authorities is vested with certain prerogatives, according to the provisions of the Constitution, none of them having the possibility to usurp the attributions of the

[45] Ibid.
[46] Ibid.
[47] Decision of the Constitutional Court of the Republic of Moldova no. 18 of December 11, 2012 for the control of the constitutionality of some provisions of the Law on administrative litigation no. 793-XIV of February 10, 2000 (Notification no. 20a/2012), published in the Official Gazette of the Republic of Moldova no. 6-9/1 of January 11, 2013.
[48] Law no. 793 of February 10, 2000 of the administrative contentious, published in the Official Gazette of the Republic of Moldova no. 57-58/375 of 18 May 2000.
[49] Decision of the Constitutional Court of the Republic of Moldova no. 18 of December 11, 2012.

other or to transmit their exercise to them [...]". Thus, the Court mentions that the division of functions in the state, or, in other words, of power in the legislature, executive and judiciary, implies cooperation and mutual control. At the same time, the Court notes that the functioning of any democratic society always presupposes as an essential premise in achieving the rule of law the need to create an institutionalized control system capable of "censoring" the activity of public authorities at any level, so that the power held does not become a prerogative at the discretion of those who exercise it. The administrative litigation, as a legal institution, aims to counteract abuses and excesses of power by public authorities, defend the rights of individuals in the spirit of the law, order the activity of public authorities, and ensure the rule of law. The article 1 para. (2) of the Law on administrative litigation stipulates that any person who considers himself injured in a right of his, recognized by law, by a public authority, by an administrative act or by not resolving a request within the legal term, may address the competent administrative contentious court to obtain the annulment of the act, the recognition of the claimed right and the reparation of the damage caused to it. The Court notes that the provisions contained in art. 1 para. (2) of the Law on administrative litigation derives from the provision of art. 53 para. (1) of the Constitution, according to which: "The person injured in a right by a public authority, by an administrative act or by the failure to resolve an application within the legal term, is entitled to obtain recognition of the claimed right, annulment of the act and reparation of the damage." The Court notes that the action in administrative contentious is examined by the courts according to the norms of the Code of Civil Procedure, with the exceptions established in the special law, which regulates this institution."[50]

Analyzing the referral, the Court noted that "the provisions of paragraph 7 of article 38 of the Law on Financial Institutions are not disproportionate to the legitimate aims of protecting the rights of creditors and ensuring the proper administration of the bank subject to liquidation. Thus, unlike the banking system, the Court does not consider that, in the present case, the effects of the acts of the Court of Accounts and the National Commission of the Financial Market since they are issued generate an irreversible process. Moreover, in the context of the above, the suspension of their execution does not constitute a rule applied by the court, but intervenes as an exceptional measure, following the individual examination of each case brought before the court for settlement. Likewise, according to Decision no. 24 of November 15, 2011, the reason for the exceptions established in the Law on Financial Institutions no. 550-XIII of July 21, 1995 is justified by the following arguments: "[…] in certain sensitive areas or those of major importance to society, such as the stability of the banking system, the state enjoys a wider margin of appreciation. This margin of appreciation presupposes the right of the state to establish regulations distinct from other similar areas of regulation. […] Banks have a major influence on the activity of beneficiaries of financial services, as well as the health of the national economy, which has determined the placement of banks in a distinct position, characterized by a special legal status, applicable to their entire existence. [...] The fact that banks operate with monetary resources belonging to many individuals, both natural and legal, makes their viability and credibility factors of major public interest and imposes increased requirements on the regulation and supervision of banking activities. [...] "[51]

In conclusion, the Constitutional Court found that "unlike the legal provisions examined in this case, the findings made in Decision no. 24 of November 15, 2011 aim to protect the interests of depositors, to avoid the withdrawal of deposits, to ensure the secrecy of deposits, as well as to reduce the negative impact on the entire financial system. Based on the above, the Court attests that the derogating norm subject to the constitutionality control represents a restriction of the independence of the activity of the courts, fact that attracts the violation of art. 6 of the Supreme Law. The Court also notes that the limitation by art. 21 para. (3) of the law of the prerogative granted to the plaintiff to request the court to suspend the administrative act, as a precautionary measure until the decision, makes it impossible to defend the person against violation of his constitutional rights and freedoms and does not create additional guarantees of legality, which contradicts the guarantees stipulated in

[50] Ibid.
[51] Ibid.

art. 20 para. (1) of the Constitution".[52]

For the reasons mentioned in Decision no. 6/2011, the Constitutional Court ruled: "1. The process for the control of the constitutionality of the phrase "in the cases expressly provided by law" from article 16 para. (2), the phrase "30 days" from article 17 para. (1) and the phrase "if the law does not provide for the prior procedure" of article 17 par. (1) letter c) of the Law on administrative litigation no. 793-XIV of February 10, 2000, with subsequent amendments and completions. 2. The provisions of article 21 para. (3) of the Law on administrative litigation no. 793-XIV of February 10, 2000, with subsequent amendments and completions."[53]

4. Recommendations and proposals *de lege ferenda*

Following the analysis of the legal regulations in Romania and in the Republic of Moldova regarding the right of the injured person by a public authority, ensuring good administration and guarantee rights, we identified aspects that could be improved:

- The Constitution of Romania and the Republic of Moldova does not expressly state the right to good administration, even if, in our opinion, the Constitution of Moldova has enshrined the right to good administration, which in our opinion is not a right to good administration, but 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.

- The Code of Good Administration, annex to Recommendation CM/Rec (2007) 7 of the Committee of Ministers of the member states of the Council of Europe has not been adopted and recognized in the legislation of Romania and the Republic of Moldova.

We also formulate the following *de lege ferenda* proposals, which were identified following the study carried out in this doctoral thesis.

- 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 nominating 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 in both Romania and 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 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) Public authorities have the obligation to respond to petitions within the terms and conditions established by 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,

[52] Ibid.
[53] Ibid.

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 para. (3) and the modification of the new para. (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

The fundamental right of the injured person by a public authority guarantees the right of the citizen, who has been harmed by a public institution in Romania or the Republic of Moldova, to obtain recognition of the claimed right, annulment of the illegal act that caused damage and reparation.

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.

The jurisprudence of the Constitutional Court of Romania and of the Republic of Moldova in the field of the right of the person injured by a public authority is relevant and ensures the guarantee of the fundamental right.

The rights of guarantees, respectively the right of the injured person by a public authority and the right to petition ensure the protection of citizens' expressions of will in relation to public authorities, as well as other rights, freedoms and civil interests, thus ensuring good state administration in favor of citizens.

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