

Constitutional references related to the guarantee of the right of a person aggrieved by a public authority in Romania

PhD. student **Cătălin-Radu PAVEL**¹

Abstract

The aim of this piece of research is to analyse the constitutional references of Article 52 of the Constitution of Romania, namely the guarantee of the right of a person aggrieved by a public authority. Therefore, the guarantee of this fundamental rights helps ensure the good administration of the rule of law, the respect for the legitimate rights and interests of Romanian citizens and, implicitly, of Romanian businesses environment. Good administration concerns the interest of both natural persons and legal persons who are engaged in the economic circuit and whose rights are granted by the fundamental law. Good administration is accomplished by granting the fundamental right of a person aggrieved through an administrative deed or through a request which was not settled within the legal time limit and, at the same time, by granting to that person a right to approach the competent authorities and to be entitled to obtain the recognition of the claimed right or of the legitimate interest, with the annulment of the deed and the repair of prejudice, respectively. The liability of the State for miscarriage of justice, as well as its right of recourse against the magistrates who acted in bad faith or serious neglect in their position are also granted. The methods used in drawing up this study are: the comparative method used to identify the right of a person aggrieved by a public authority in the Romanian Constitutions and in the Constitutions of other states, and the historical method, which was used in the analysis of the historical evolution of the studied field. The logical method served to analyse the current research in the field, while the sociological method helped to study social impact. The quantitative method was used to study the relevant applicable legislation. The results of this research have highlighted the current trends and the need of citizens and economic actors to benefit from good administration by public authorities. The implications of research for ensuring the good administration of citizens, economic agents and implicitly, of the business environment, reveals how important it is to ensure the supreme values, granted by the Constitution, namely the right of a person aggrieved by a public authority, a fundamental right analysed in this study.

Keywords: *guarantee of the right of a person aggrieved by a public authority, good administration, Romanian businesses environment, ensuring the supreme values, fundamental right, Romanian Constitution.*

JEL Classification: K10, K23, K41

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

1. Introductory aspects

1.1 In the current context of a democratic society, we considered that the issues addressed in this research were of particular importance given the society's tendencies to continuously improve its management, the aspirations of citizens, both individuals and legal persons, for an improvement in the economic circuit, the relationship with public authorities, the need for public safety and security and the need to guarantee the fundamental rights of the citizen in a rule of law.

1.2 The researched scientific issue consisted in identifying the constitutional elements regarding the guarantee of the right of the person injured by a public authority in Romania, thus ensuring a good administration of the state and of the citizens.

1.3 The novelty of this research consisted in addressing a less analyzed topic so far, namely the presentation of the constitutional elements on guaranteeing the right of the person injured by a public authority. The novelty elements could be found in the way of approaching the subject by the author, as well as by presenting some selective aspects regarding the correlation between ensuring good administration and guaranteeing the right of the person injured by a public authority, as well as in the conclusions and recommendations made by the author .

1.4 The present study presents the analysis of its component parts: Doctrinal references on the right of a person injured by a public authority in Romania, The case law of the Constitutional Court of Romania on the right of a person injured by a public authority, Identifying the right of a person injured by a public authority in the Romanian Constitutions, a favorable economic climate by guaranteeing the right of the person injured by a public authority, as well as the author's conclusions and lege-ferenda proposals.

1.5 The methods used in the elaboration of this study are: the comparative method used to identify the right of a person injured by a public authority in the Romanian Constitutions and in the Constitutions of other states and the historical method that was used to analyze the historical evolution of the studied field. The logical method has analyzed current research in the studied field, and the social impact has been studied using the sociological method. Using the quantitative method, the relevant legislation was studied.

1.6 The results of this research have highlighted current trends and the need for citizens and economic actors to benefit from good governance from public authorities. The implications of research to ensure the good administration of citizens, economic agents and, implicitly, the business environment reveal the importance of ensuring the supreme values guaranteed by the Constitution, namely the right of a person injured by a public authority as fundamentally analyzed in this study.

2. Doctrinary reporting on the rights of the person crossed by a public authority in Romania

Article 52 of the Romanian Constitution² guarantees the right of the citizen, who has been prejudiced by a public institution in Romania, to obtain recognition of the alleged right, to annul the unlawful act that caused him prejudice and to repair the damages caused.

The Law on the Revision of the Romanian Constitution in 2003³ amended Article 48 The Right of the Injured by a Public Authority in the 1991 Constitution, amending paragraphs 1 and 3. Thus, (1) the form of which was: "A person injured in a right by a public authority, by an administrative act or by 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 "Has been amended to" A person injured in a right of his own or in a legitimate interest, by a public authority, by an administrative act or by failure to resolve a request within the legal time, is entitled to obtain recognition of the claimed right; or (3) whose form was: "The State has patrimonial responsibility, according to the law, for the damages caused by the judicial errors committed in criminal trials." was amended in "The State is in charge of the patrimonial damages caused by judicial errors. State liability is established under the law and does not remove the liability of magistrates who have exercised their functions in bad faith or serious negligence. "

The right of the person injured by a public authority, "guaranteed by art. 52 of the fundamental law of Romania, together with the right to petition, (...) constitute the class of guarantee rights ".⁴

The right of the person injured by a public authority was regulated by the provisions of art. 52 of the Constitution of Romania: "(1) A person injured in a right of his or her own legitimate interest, by a public authority, by an administrative act or by the failure to solve a request within the legal term, is entitled to the recognition of the right alleged or legitimate interest, the annulment of the act and the repair of the damage. (2) The conditions and limits for the exercise of this right shall be determined by organic law. (3) The State shall be liable for the damage caused by judicial errors. State liability is established under the law and does not remove the liability of magistrates who have performed their duties in bad faith or serious negligence. "

A first author⁵, regarding the right of a person injured by a public authority, noted that "the amendments made in para. (1) through the Review Law followed a correlation with the other constitutional provisions and, first of all, with art. 21 which

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

³ Law no. 429/2003 for the revision of the Romanian Constitution, in force since 29.10.2003, published in the Official Gazette, Part I no. 758 of 29.10.2003.

⁴ Pavel Cătălin-Radu, *Considerații teoretice privind realizarea drepturilor garanții*, in „Revista Română de Criminalistică” no. 1/2017, Vol. XVIII, Bucharest, p. 2475.

⁵ I. Muraru, E.S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole*, Ed. C.H. Beck, Bucharest, 2008, p. 517.

regulates free access to justice in the sense that any person can address justice to defend 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 completed in the sense that it is entitled to an action in the administrative litigation court, not only the injured person in a law recognized by law, but also the person injured in a legitimate interest (directly and personal)."

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

All rights and guarantees regarding the person injured in a right of his or his legitimate interest have been regulated in Romania by an organic law, namely Law of Administrative Contentious no. 554/2004⁶.

A second author⁷ noted that "in defining the concept of" fundamental rights "the following have been considered: a) fundamental rights are subjective rights of citizens, b) these subjective rights are essential to the life, freedom and dignity of citizens, indispensable for the free development of human personality; c) fundamental rights are established by the Constitution and guaranteed by the Constitution and laws. "

A third author⁸, referring to the right of a person injured by a public authority, states that "Article 52 of the Constitution of Romania constitutes the constitutional basis of the responsibility of public authorities for injuries sustained by persons in violation of their rights and freedoms or of a legitimate interest, means that all other provisions on rights and freedoms must be correlated with this constitutional text. "

A fourth author⁹ has established that the right of a person injured by a public authority is "the constitutional basis of public authorities' liability for injuries caused to citizens by violating or disregarding their rights and freedoms."

The Universal Declaration of Human Rights of 10 December 1948¹⁰, in Article 8, governed the right of a person injured by a public authority: "Everyone has the right to effective remedy from the competent national judicial authorities against acts which violate fundamental rights recognized by his constitution or law. "

⁶ Law of administrative contentious no. 554/2004 in force from 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004. Regarding the observance of the constitutional requirements by this law, see Cătălin-Silviu Sararu, *Legea contenciosului administrativ nr. 554/2004. Examen critic al Deciziilor Curții Constituționale*, Ed. C.H. Beck, Bucharest, 2015.

⁷ N. Pavel, *Drept constituțional și instituții politice, Teoria Generală*, Ed. Fundației România de mâine, Bucharest, 2004, p. 70.

⁸ G. Iancu, *Drept constituțional și instituții politice*, 3rd edition, Ed. C.H. Beck, București, 2014, pp. 294-295.

⁹ I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 15th ed., Vol. I, Ed. C.H. Beck, Bucharest, 2016,

¹⁰ The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10 December 1948.

3. The jurisprudence of the Constitutional Court of Romania on the rights of the person weared by a public authority

The Constitutional Court of Romania has appreciated that the provisions of art. 52 have to be correlated with the "constitutional provisions of art. 21, which regulates free access to justice and those of art. 126 par. (6) the first sentence, according to which the judicial control of the administrative acts of the public authorities, through administrative litigation, is guaranteed."¹¹

Analyzing the jurisprudence of the Constitutional Court of Romania, two decisions have been selected concerning the right of the person injured by a public authority.

3.1 Decision of the Constitutional Court of Romania no. 889 of 16.12.2015¹²

The Constitutional Court of Romania was legally notified and was competent to resolve the unconstitutionality of the sole article, point 2, paragraph 4, and the sole article, point 4, on Art. VII of Government Emergency Ordinance no. 21/2015 of the Law on the approval of Government Emergency Ordinance no. 21/2015 for amending and completing the Law no. 165/2013 regarding the measures for completing the restitution process, in kind or by equivalent, of the buildings abusively taken during the communist regime in Romania, as well as of art. 3 of Government Emergency Ordinance no. 94/2000 on the restitution of immovable property belonging to religious denominations in Romania.

The author of the exception invoked the provisions of Art. 1 par. 4 of the Constitution regarding the principle of the separation of powers and the balance of powers within constitutional democracy, the provisions of art. 16 par. 2 of the Constitution, according to which no one is above the law, the provisions of art. 21 of the Constitution regarding free access to justice, the provisions of art. 52 par. 2 on the right of a person injured by a public authority and the provisions of art. 124 par. 1 of the Constitution regarding the performance of justice.

Examining the objection of unconstitutionality, the Constitutional Court of Romania found that, according to art. 52 of the Constitution, "a person injured in a right of his own or in a legitimate interest, by a public authority, by an administrative act or by the failure to solve within a legal term a request, is entitled to obtain recognition of the claimed right or interest legitimate, 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 par. (6) the first sentence, according to which the judicial control of the administrative acts of the public authorities, through administrative litigation, is guaranteed."¹³

¹¹ Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 of 17.02.2016. To analyze the case-law of the Constitutional Court on the right of a person injured by a public authority see Cătălin-Silviu Săraru, *op. cit.*, 2015, p. 33, 34.

¹² Ibidem.

¹³ Ibidem.

The Constitutional Court of Romania, in settling the exception, held that in the judicial stage where the claimed right or legitimate interest is acknowledged, the injured party must have all the legal prerogatives and all the constitutional guarantees guaranteed by art. 21 par. 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 primacy of the law, which presupposes the existence of an effective legal remedy for the enforcement of civil rights (judgment of 12 November 2002 in the case of *Běleš and Others v Czech Republic*, paragraph 49).

For the reasons mentioned in the decision no. 889/2015, the Constitutional Court of Romania decided to admit the objection of unconstitutionality formulated by the President of Romania and found that the sole article, point 2, paragraph 4, and the single article, point 4 regarding art. VII of Government Emergency Ordinance no. 21/2015 of the Law on the approval of Government Emergency Ordinance no. 21/2015 for amending and completing the Law no. 165/2013 regarding the measures for completing 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 Government Emergency Ordinance no. 94/2000 on the restitution of immovable property belonging to religious denominations in Romania are unconstitutional.

3.2 Decision of the Constitutional Court of Romania no. 694 of 20.10.2015¹⁴

The Constitutional Court of Romania was legally notified and was competent to settle the objection of unconstitutionality of the provisions of art. 124 par. 1 reported to those of art. 70 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code.

The author of the unconstitutionality plea in law alleges breach of the injured party's right to compensation for damages resulting from an administrative act - fiscal annulled by an irrevocable court order, the contested law limiting the fundamental right of the injured person to interest after the expiry of the 45 days of resolving the claim for restitution of unlawfully levied amounts. Thus, the taxpayer who has appealed an administrative act by an action for annulment and has already paid the tax obligations imposed by that act has limited his right to claim the sums already paid on the basis of the unlawful act once the application for annulment has been filed, as there is this procedure for restitution of amounts unlawfully levied.

In conclusion, the Constitutional Court held that "the provisions of art. 124 par. (1) related to those of art. 70 of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, while guaranteeing the payment of interest for the non-fulfillment of the restitution obligation, does not fully cover the damage that the taxpayer may suffer because he has agreed to voluntarily execute a tax liability he considered unlawful, later found by a court or the tax authority itself. In this way, a diminution of the taxpayer's patrimony takes place through a state action, thus

¹⁴ Decision of the Constitutional Court no. 694 / 20.10.2015, published in the Official Gazette of Romania no. 948 of 22.12.2015.

affecting the right of private property¹⁵.

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

Ensuring a favorable economic climate for the conduct of economic activities can be ensured by guaranteeing fundamental rights. Thus, the Constitutional Court of Romania is the supreme guarantor of the Constitution and can guarantee the guarantee of fundamental rights.

Given that all economic players are authorized and operate on the basis of the normative regulations in force, it was considered that guaranteeing the right of a person injured by a public authority - a natural or legal person - by the Constitution, strengthens and strengthens the trust of the persons involved in the economic circuit respecting their rights.

4. Identification of the rights of the person weared by a public authority in the Romanian Constitution

In this paragraph were selectively analyzed the Romanian Constitutions, namely the Statute of the Paris Convention of 7/9 August 1858¹⁶, a statute having the value of the Constitution of Romania, the Romanian Constitution adopted on 29 June 1866¹⁷, the Romanian Constitution of 8 December 1991¹⁸, the Constitution Revised Romania in 2003¹⁹ and the Draft Law on the Revision of the Romanian Constitution in 2014²⁰.

4.1 The Development Status of the Paris Convention of 7/19 August 1858²¹

The development status of the Paris Convention of 7/9 August 1858 was adopted by the Lord of the United Romanian Principalities, Alexandru Ioan I in May 1864. This statute was worth the Constitution of Romania, being mentioned in its preamble: "The convention concluded in Paris on 7/19 August 1858, between the Suzerian Court and the Powers guaranteeing the autonomy of the United Principalities, is the fundamental law of Romania."²²

¹⁵ Ibidem.

¹⁶ 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.

¹⁷ Ibidem, pp. 33-66.

¹⁸ The Romanian Constitution of 1991 was published in the Official Gazette no. 233 of November 21, 1991.

¹⁹ Ibidem.

²⁰ The Draft Law on the Revision of the Romanian Constitution of 2014 was published in the Official Gazette no. 100 of 10 February 2014.

²¹ 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.

²² Ibidem, p. 7.

It is clear from the Paris Development Convention's statutes of 7/9 August 1858 that it does not contain provisions on the right of a person injured by a public authority.

4.2. The Romanian Constitution adopted on 29 June 1866²³

The Romanian Constitution of 1866 came into force on the date of sanctioning, June 30, 1866, and was published in the Official Gazette of Romania no. 142 of July 1, 1866. With the entry into force of the Romanian Constitution of 1866, the fundamental rights of the citizens were also regulated.

From the analysis of the Romanian Constitution of 1866, the provisions of art. 29: "No prior authorization is necessary to prosecute civil servants for the acts of their administration by the injured parties; while leaving no special rules on the ministers. Times and ways of pursuit will be governed by a law. Special provisions in criminal codices will determine the penalties of the prisoners. "²⁴

4.3 The Romanian Constitution of 8 December 1991²⁵

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

The analysis of the Romanian Constitution of 1991 identified the provisions of art. Article 48: "The right of a person injured by a public authority (1) A person injured in a right by a public authority, by an administrative act or through the failure to solve within a lawful time a claim, is entitled to the recognition of the claimed right, act and repairing the damage. (2) The conditions and limits for the exercise of this right shall be determined by organic law. (3) The State shall be liable, in accordance with the law, for property damage caused by judicial errors committed in criminal proceedings. "

It was found that the Constitution of 1991 states that the state is responsible for judicial errors, these being limited to those committed in criminal trials. The Constitution calls this right, the right of the person injured by a public authority, and sets out the conditions and limits of its exercise by organic law.

4.4 The Romanian Constitution revised in 2003²⁶

In the contemporary legal system, the right of a person injured by a public authority, as a fundamental right in Romania²⁷, was regulated by the provisions of

²³ Ibidem, pp. 33-66.

²⁴ Ibidem, p. 40.

²⁵ The Romanian Constitution of 1991 was published in the Official Gazette no. 223 of November 21, 1991.

²⁶ Ibidem.

²⁷ For the doctrinal analysis of the regulation of the right of the person injured by a public authority see Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016, p. 464-468.

art. 52 of the Constitution of Romania republished in 2003: "(1) A person injured in a right of his or her own legitimate interest, by a public authority, by an administrative act or by not solving within a legal term a request, is entitled to obtain recognition of the claimed right or legitimate interest, the annulment of the act and the repair of the damage. (2) The conditions and limits for the exercise of this right shall be determined by organic law. (3) The State shall be liable for the damage caused by judicial errors. State liability is established under the law and does not remove the liability of magistrates who have performed their duties in bad faith or serious negligence. "

4.5 Draft Law on the Revision of the Romanian Constitution in 2014²⁸

From the analysis of the Draft Law on the revision of the Romanian Constitution in 2014, the proposed amendments to the art. 52 of the Constitution in force. Thus, in the proposal for revision, art. 52 shall be amended and completed as follows: "Paragraph (2) shall have the following content:" (2) The terms and limits of the exercise of this right shall be established by law. "Paragraph 3 shall have the following content:" (3) fully and non-discriminatorily, for damages caused by judicial or administrative errors. State liability is established under 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 added, with the following content:" (3.1) The State is obliged to immediately in the regression to the perpetrators of judicial or administrative errors causing damage. "²⁹

It has been found that the interest at constitutional level has been since ancient times to protect at the fundamental level the rights of the person injured by a public authority, which reinforces the conviction that the protection of the business environment and the the economic environment and ensuring the good administration of citizens and guaranteeing their fundamental rights.

5. Ensuring a favorable economic climate through guaranteeing the right of the person weared by a public authority

5.1 By guaranteeing the right of the person injured by a public authority at a fundamental level, good administration of the rule of law, observance of the legitimate rights and interests of the citizens and implicitly of the Romanian business environment is assured.

Good governance concerns the interest of both individuals and legal entities who are trained in the economic circuit and to whom the fundamental law guarantees their rights.

²⁸ The Draft Law on the Revision of the Romanian Constitution of 2014 was published in the Official Gazette no. 100 of 10 February 2014.

²⁹ Legislative initiatives of citizens according to Law no. 189/1999 Reason to the draft law on the revision of the Constitution of Romania - Citizens Legislative Initiative, December 10, 2013 Published in the Official Gazette, Part I, no. 100 of 10.02.2014.

Good administration is achieved by guaranteeing the fundamental right of the injured person by an administrative act or by failing to legally solve a claim and at the same time by guaranteeing his right to address the competent authorities and to be entitled to recognition of the claimed right or interest legitimate, respectively the annulment of the act and the reparation of the damages.

It also guarantees the state's liability for judicial errors and also the right of the latter to regress the magistrates who have performed their duties in bad faith or serious negligence.

5.2 The right to good administration was also regulated in Recommendation CM / Rec (2007) 7 of the Committee of Ministers of the member states of the Council of Europe³⁰.

In the recitals of the recommendation, it was noted that good administration should be ensured by the quality of the legislation, which must be clear and accessible, and the public administration services must ensure the basic needs of the society.

Regarding the concept of good administration, the Recommendation noted that it "involves ensuring a balance between the rights and interests of those directly injured by public authorities on the one hand and the protection of the interests of the entire community, especially the weak and vulnerable, on the other hand."³¹

The Committee of Ministers, in its recommendation, considered that "good administration is an element of good governance; this is not just a preoccupation with regard to the legal regime; it depends on the quality of organization and management; it must meet the requirements of effectiveness, efficiency and relevance to society's needs; it must maintain, support and protect property and public interests; it must comply with budgetary requirements; must exclude any form of corruption."³²

The Committee of Ministers also stated in the preamble to the recommendation that good administration depends on the available human resources of public authorities and on the qualities and training of public sector staff.

5.3 In Romania, any natural or legal person has been guaranteed by Article 52 of the Constitution the right to obtain either the recognition of the claimed right or the legitimate interest, or the annulment of the act and the repair of the damage. Any economic agent, a legal person, can exercise his / her rights by exercising the right of free access to justice, under art. 21 of the Constitution of Romania.

According to an author in the administrative doctrine, "Article 52 is therefore the constitutional basis of defending citizens against the abuses of public authorities,

³⁰ Recommendation CM/Rec (2007) 7 of the Committee of Ministers of the member states of the Council of Europe adopted by the Committee of Ministers on 20 June 2007 at the 999th Meeting of Ministers of the member States of the Council of Europe on <https://wcd.coe.int/ViewDoc.jsp?p=&id=1155877&Site=CM&direct=true> consulted on 15 November 2017.

³¹ The Preamble to Recommendation CM / Rec (2007) 7, which was adopted by the Committee of Ministers on 20 June 2007 at the 999th Meeting of Ministers of the Council of Europe member states on <https://wcd.coe.int/ViewDoc.jsp?p=&id=1155877&Site=C M& direct=true> consulted on 15 November 2017.

³² Ibidem.

implicitly of their responsibility for the repair of damages to citizens. More specifically, art. 52 is the constitutional basis for the reparation of damages caused to citizens by regulating the three situations in which the liability of a public authority may occur: a) when it has issued an administrative act that damages a right or a legitimate interest of a person; b) when a person's request is not solved within the legal term, and c) when legal errors have occurred."³³

Article 52 of the Romanian Constitution was the basis for the drafting of the legislation in the administrative field in Romania, respectively of the Law on administrative contentious no. 554/2004³⁴. According to art. 7 "(1) Before appealing to the competent administrative litigation court, the person who considers himself / herself to be injured in his / her right or in a legitimate interest by means of an individual administrative act shall request the issuing public authority or the higher authority, if this exists, within 30 days of the date of communication of the act, the revocation in whole or in part thereof. "

Law of administrative contentious no. 554/2004 of Romania, excludes the possibility of attacking certain types of administrative acts, namely "(1) The administrative acts of the public authorities concerning their relations with the Parliament can not be appealed against in the administrative litigation; (b) Military headquarters acts. (2) No administrative proceedings may be brought against the administrative litigation, the administrative acts for the modification or abolition of which, by an organic law, are provided by another judicial procedure. (3) The administrative acts issued for the application of the status of war, state of emergency or emergency, those concerning the national defense and security or those issued for the restoration of public order, as well as for the elimination of the consequences of natural calamities, epidemics and epizootics may be attacked only for excess power."³⁵

Article 52 of the Romanian Constitution, paragraph 2 refers to the organic law: "The conditions and limits of the exercise of this right are established by organic law." In the doctrine³⁶, it was stated that "The limits to which art. 52 par. (2) are even the administrative acts exempt from the administrative contentious control, known in classical doctrine as the "non-receiving fine". From the content of art. 52 paragraph (2) of the Constitution, which allows for the "conditions and limits of the exercise" of the right of the person injured by a public authority to be determined by organic law, that three hypostases can be considered: an action against public authority only; an action against the official only; a concurrent action against both. Law 554/2004 on administrative contentious with the subsequent amendments and

³³ A. Iorgovan, *Tratat de drept administrativ*, Vol I, 4th ed., Ed. All Beck, Bucharest, 2005, p. 66.

³⁴ Law of administrative contentious no. 554/2004 in force from 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

³⁵ Article 5, paragraph 1, point. a and b and paragraphs (2) and (3) of the Law on administrative contentious no. 554/2004 in force from 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

³⁶ I. Muraru, E.S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole*, Ed. C.H. Beck, Bucharest, 2008, p. 521.

completions was focused on the last settled solution and in the old regulation in the matter, Law no. 29/1990, developed over time by administrative jurisprudence."

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

The constitutional text refers to the regulations of the organic law, the provisions of art. 96 of Law 303/2004 on the status of judges and prosecutors, which provided that "(1) The State shall be liable for the damages caused by judicial errors. (2) State liability is established under the law and does not remove the liability of judges and prosecutors who have performed their duties in bad faith or serious negligence. (3) The cases in which the injured party is entitled to compensation for damages caused by judicial errors committed in criminal proceedings are established by the Code of Criminal Procedure. (4) The right of the injured party to reparation for material damages caused by judicial errors committed in lawsuits other than criminal ones shall be exercised only if a final decision has been established in advance by the criminal or disciplinary liability, as the case may be, of the judge or prosecutor for an act committed in the course of the trial and whether such an act is likely to cause a judicial error. (5) The person who in the course of the trial contributed in any way to the judicial error by the judge or prosecutor is not entitled to compensation for the damage. (6) In order to compensate the injured person, the injured party may appeal only against the state represented by the Ministry of Public Finance. (7) After the damage was covered by the state pursuant to the irrevocable decision given in compliance with the provisions of para. (6), the State may bring an action for damages against the judge or prosecutor who, in bad faith or in gross negligence, has committed the injurious judicial error. 8. The limitation period for the right of action in all the cases provided for in this Article shall be one year. (1) Any person may refer the Superior Council of Magistrates directly or through the heads of the courts or prosecutor's offices in connection with the inappropriate activity or conduct of judges or prosecutors, violation of professional obligations in relation to the legal persons or committing disciplinary irregularities. (2) The exercise of the right provided in par. (1) can not call into question the solutions pronounced by the judgments, which are subject to legal remedies."

5.5 The European Court of Human Rights is an international body set up to "ensure compliance with the commitments made to the High Contracting Parties by this Convention and its Protocols."³⁷

³⁷ Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Additional Protocols to that Convention was ratified by the Romanian Parliament by Law no. 30/1994 published in the Official Gazette, part I, number 135 of May 31, 1994.

With the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, "Romania recognizes the right to an individual appeal before the European Commission of Human Rights and the mandatory jurisdiction of the European Court of Human Rights in respect of the rights contained in the European Convention on Human Rights, Protocol No. 4 Recognizing certain rights and freedoms other than those already enshrined in the Convention and the First Additional Protocol to the Convention, Strasbourg, 16 September 1963, and Protocol No. 7, Strasbourg, 22 November 1984, for the cases in which the violation of the rights guaranteed by these texts comes after their entry into force for Romania."³⁸

Thus, any Romanian citizen has the right to apply to the European Court of Human Rights if the rights provided for in the Convention have been violated.

6. Conclusions

6.1 The results of this research have highlighted current trends and the need for citizens and economic actors to benefit from good governance from public authorities.

6.2 The implications of research to ensure the good administration of citizens, economic agents and, implicitly, the business environment reveal the importance of ensuring the supreme values guaranteed by the Constitution, namely the right of a person injured by a public authority as fundamentally analyzed in this study.

6.3 Article 52 of the Romanian Constitution³⁹ guarantees the right of the citizen, who has been prejudiced by a public institution in Romania, to obtain recognition of the alleged right, to annul the unlawful act that caused him prejudice and to repair the damages caused. The Constitutional Court of Romania has appreciated that the provisions of art. 52 have to be correlated with the "constitutional provisions of art. 21, which regulates free access to justice and those of art. 126 par. (6) the first sentence, according to which the judicial control of the administrative acts of the public authorities, through administrative litigation, is guaranteed."⁴⁰

6.4 It has been found that the interest at the constitutional level has been since ancient times to protect at the fundamental level the rights of the person injured by a public authority, which reinforces the conviction that the protection of the business environment and the the economic environment and ensuring the good administration of citizens and guaranteeing their fundamental rights.

³⁸ Article 3 of the Law no. 30/1994 on the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocols to this Convention, published in the Official Gazette of Romania, Part I, No 135 of 31 May 1994.

³⁹ The Romanian Constitution of 2003 was published in the Official Gazette no. 767 of 31 December 2003.

⁴⁰ Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 of 17.02.2016.

6.5 By guaranteeing the right of the person injured by a public authority at a fundamental level, good administration of the rule of law, observance of the legitimate rights and interests of the citizens and implicitly of the Romanian business environment is assured. Good governance concerns the interest of both individuals and legal entities who are trained in the economic circuit and to whom the fundamental law guarantees their rights.

6.6 Article 52 of the Romanian Constitution was the basis for the drafting of the legislation in the administrative field in Romania, respectively of the Law on administrative contentious no. 554/2004⁴¹. The patrimonial liability of the state for damages caused by legal errors to economic agents or to any citizen has been regulated at constitutional level by art. 52 par. (3) of the Romanian Constitution.

7. Author's recommendations

As a result of this analysis, the following proposals for lege ferenda have been formulated.

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

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

1.1.1. The principle of legality

1.1.2. The principle of equality

1.1.3. Principle of impartiality

1.1.4. The principle of proportionality

1.1.5. The principle of legal certainty

1.1.6. The principle of taking action within a reasonable time

1.1.7. The principle of participation

1.1.8. The principle of privacy

1.1.9. The principle of transparency

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

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

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

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

⁴¹ Law of administrative contentious no. 554/2004 in force from 06.01.2005 with subsequent amendments and amendments, which is based on the publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

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

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

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

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

At the same time, the recommendation could form the basis of the drafting of an Administrative Procedure Code, which was discussed and the date of the present proposal was not finalized.

Bibliography

- Antonie Iorgovan, *Tratat de drept administrativ*, Vol. I, II, 4th ed., All Beck, Bucharest, 2005.
- Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016.
- Cătălin-Silviu Sararu, *Legea contenciosului administrativ nr. 554/2004. Examen critic al Deciziilor Curții Constituționale*, Ed. C.H. Beck, Bucharest, 2015.
- C. Bîrsan, *Convenția europeană a drepturilor omului*, 2nd ed., CH Beck, Bucharest 2010.
- E. Albu, *Recomandarea CM/REC (2007)7 a Comitetului Miniștrilor din Statele membre ale Consiliului Europei și dreptul la o bună administrație (administrare)*, „Revista de Drept Comercial”, Year XVII, no. 10/2007.
- F. Lieber, *On Civil Liberty and Self-Government*, Philadelphia, Lippincott, Grambo and Co, 1853, Reproduction by Forgotten Books, London, Volume I, Great Britain, 2015.

- G. Iancu, *Drept constituțional și instituții politice*, 3rd ed., Ed. C.H. Beck, Bucharest, 2014.
- Georges Burdeau, *Droit Constitutionnel et institutions politiques*, Librairie Générale de Droit et de Jurisprudence, Paris, 1977.
- I. Deleanu, *Instituții și proceduri constituționale în dreptul român și în dreptul comparat*, Ed. C.H. Beck, Bucharest.
- I. Muraru, E.S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole*, Ed. C.H. Beck, Bucharest, 2008.
- I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 15th ed., Vol. I, C.H. Beck, Bucharest, 2016.
- I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 15th ed., Vol. II, C.H. Beck, Bucharest, 2013.
- I. Muraru, M.L. Pucleanu, G. Iancu, C.L. Popescu, *Constituțiile Române Texte. Note. Prezentare Comparativă*, Ed. Regia Autonomă „Monitorul Oficial”, Bucharest, 1993.
- Mărgărit Nicolae, Pavel Cătălin-Radu, *Criminalistică – Note de curs*, Ed. Moroșan, Bucharest, 2017.
- N. Pavel, *Drept constituțional și instituții politice, Teoria Generală*, Ed. Fundației România de mâine, Bucharest, 2004.
- Pavel Cătălin-Radu, *Considerații teoretice privind realizarea drepturilor garanții*, in „Revista Română de Criminalistică” no. 1/2017, Vol. XVIII, Bucharest.
- T. Drăganu, *Drept Constituțional și Instituții Politice Tratat Elementar*, Vol. I, Ed. Lumina Tipografică, Bucharest, 1997.