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NATURA JURIDICĂ ȘI VALENȚELE RĂSPUNDERII FUNCȚIONARILOR PUBLICI ÎN DREPTUL ADMINISTRATIV CONTEMPORAN

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Prezentul articol analizează multidimensionalitatea răspunderii juridice a funcționarilor publici, privită ca un pilon esențial al bunei guvernări și al statului de drept. Studiul explorează natura juridică a raporturilor de serviciu, evidențiind distincția fundamentală dintre responsabilitate, ca obligație de diligență în exercitarea prerogativelor de putere publică și răspundere, ca formă de sancționare a abaterilor de la normele legale. O atenție deosebită este acordată formelor specifice de răspundere - disciplinară, contravențională, civilă (patrimonială) și penală - prin prisma reglementărilor naționale și a standardelor internaționale privind integritatea în sectorul public. Analiza teoretică este completată de examinarea principiilor care guvernează angajarea răspunderii, precum legalitatea, proporționalitatea și vinovăția, subliniind rolul acestora în protejarea interesului general și în prevenirea abuzului de putere.

Cuvinte-cheie: *funcționar public, răspundere juridică, administrație publică, statutul funcționarului public, răspundere disciplinară, răspundere patrimonială (sau civilă).*

THE LEGAL NATURE AND VALENCES OF CIVIL SERVANT LIABILITY IN CONTEMPORARY ADMINISTRATIVE LAW

This paper analyzes the multidimensionality of the legal liability of public officials, seen as an essential pillar of good governance and the rule of law. The study explores the legal nature of service relationships, highlighting the fundamental distinction between responsibility, as an obligation of diligence in the exercise of public power prerogatives, and liability,

as a form of sanctioning deviations from legal norms. Particular attention is paid to the specific forms of liability - disciplinary, contraventional, civil (property) and criminal - through the lens of national regulations and international standards on integrity in the public sector. The theoretical analysis is complemented by the examination of the principles governing the engagement of liability, such as legality, proportionality and culpability, underlining their role in protecting the general interest and preventing the abuse of power.

Keywords: *civil servant, legal liability, public administration, civil servant status, disciplinary liability, patrimonial (or civil) liability.*

NATURE JURIDIQUE ET VALEURS DE LA RESPONSABILITÉ DES AGENTS PUBLICS EN DROIT ADMINISTRATIF CONTEMPORAIN

Cet article analyse la multidimensionnalité de la responsabilité juridique des agents publics, considérée comme un pilier essentiel de la bonne gouvernance et de l'État de droit. L'étude explore la nature juridique des relations de service, en soulignant la distinction fondamentale entre la responsabilité, en tant qu'obligation de diligence dans l'exercice des prérogatives du pouvoir public, et la responsabilité civile, en tant que sanction des manquements aux normes juridiques. Une attention particulière est portée aux différentes formes de responsabilité – disciplinaire, contraventionnelle, civile (responsabilité patrimoniale) et pénale – à travers le prisme des réglementations nationales et des normes internationales d'intégrité dans le secteur public. L'analyse théorique est complétée par l'examen des principes régissant l'engagement de la responsabilité, tels que la légalité, la proportionnalité et la culpabilité, en soulignant leur rôle dans la protection de l'intérêt général et la prévention des abus de pouvoir.

Mots-clés: *fonctionnaire, responsabilité juridique, administration publique, statut de fonctionnaire, responsabilité disciplinaire, responsabilité patrimoniale (ou civile).*

ПРАВОВАЯ ПРИРОДА И ЗНАЧЕНИЕ ОТВЕТСТВЕННОСТИ ГОСУДАРСТВЕННЫХ СЛУЖАЩИХ В СОВРЕМЕННОМ АДМИНИСТРАТИВНОМ ПРАВЕ

В данной статье анализируется многомерность юридической ответственности государственных служащих, рассматриваемой как важнейший фактор надлежащего управления и верховенства права. Исследование рассматривает правовую природу служебных отношений, подчеркивая принципиальное различие между ответственностью, как обязанностью проявлять усердие при осуществлении полномочий государственной власти, и ответственностью как формой санкционирования отклонений от правовых норм. Особое внимание уделяется конкретным формам ответственности – дисциплинарной, административной, гражданской (имущественной) и уголовной – сквозь призму национальных нормативных актов и международных стандартов добросовестности в государственном секторе. Теоретический анализ дополняется изучением принципов, регулирующих возникновение ответственности, таких как законность, соразмерность и вина, подчеркивая их роль в защите общественных интересов и предотвращении злоупотребления властью.

Ключевые слова: *госслужащий, юридическая ответственность, госуправление, статус госслужащего, дисциплинарная, имущественная (или гражданская) ответственность.*

Introduction

In the landscape of 21st-century public administration, characterized by accelerated digitalization and the paradigm of "Good Administration," the liability of civil servants stands as a fundamental pillar of state integrity. The contemporary administrative phenomenon requires a shift from a purely punitive approach to a multi-faceted accountability framework. The significance of this topic lies in the delicate balance that must be maintained between

protecting the civil servant's decisional autonomy and the imperative of sanctioning deviations from the path of legality and public interest.

The Legal Nature of Liability. From a doctrinal perspective, the legal nature of civil servant liability is intrinsically multidimensional and hybrid. It does not belong to a single branch of law but represents a synthesis of administrative, civil, and criminal norms tailored to the specific status of the public agent. At its core, this liability is a "Public Law Liability," derived from the special relationship of subordination and trust between the official and the State. Unlike private sector employees, the civil servant acts as a mandatary of public power, a status that attracts a derogatory legal regime where the protection of the collective interest prevails over individual contractual terms.

The Valences of Liability in Modern Administration. The "valences" or functions of legal liability in contemporary administrative law have evolved significantly:

- ***The Coercitive Valence:*** Acts as a traditional mechanism for sanctioning illicit behavior and grave administrative errors.
- ***The Preventive-Educational Valence:*** Cultivates a culture of integrity and deters potential acts of corruption or abuse of power through the clarity of consequences.
- ***The Reparatory (Restorative) Valence:*** Focuses on the recovery of damages caused to the public patrimony or to third parties, primarily through the State's right of recourse.
- ***The Guarantee Valence:*** Serves as a fundamental guarantee for citizens that the principles of transparency and the Rule of Law are upheld within the executive branch.

Results and discussion

The notion of civil servant has its roots in the depths of our past, the first statute of civil servant was drawn up by the Roman emperor Hadrian. Ancient Rome was concerned with the good administration of the state, and in Byzantium the public services were organized into 10 branches, with countless ministries. The attention that the heads of state paid to the status of civil servant was not accidental. It was aimed at ensuring the good administration of the state [1].

The smooth running of the activity in the life of a state depends to the greatest extent on the legal and economic status of the civil servant. A civil servant recruited according to objective criteria and fairly remunerated constitutes the first condition of a state apparatus respectful of the rights guaranteed by laws to individuals and competent to solve the problems imposed by the satisfaction of general interests [2]. On the contrary, if the civil servant is recruited according to random criteria, if he does not enjoy stability and the remuneration is unsatisfactory, these aspects will have an unfavorable impact on the efficiency of the civil servant's activity and the smooth functioning of the public service. In this context, Stendhal mentioned that paying someone little and asking him for all his daily work means that the state organizes theft and misery [3].

From here we come to the conclusion that has long become an axiom: when the state does not take care of its civil servants, it collapses its foundations.

The regulation of the legal status of the civil servant has its foundation in the supreme law, which establishes elements of the status of the civil servant. The first one that results from the constitutional provisions (art. 38, art. 39, art. 41, art. 43, art. 44, etc.) [4] , those in the civil service laws [5] and the administrative litigation [6], which refer to the labor and civil procedural legislation, consists in determining the legal regime to which the status of the civil servant is subject, the public law regime, or the private law regime. In a general analysis, we obtained a dual

regime by interweaving the norms of public and private law. Thus, the legal regime of the civil servant is determined by the provisions of the Civil Service Law, the Administrative Litigation Law, the Labor Code and the Civil Procedure Code. Analyzing civil servants, we observe the problem of the duality of civil servants, respectively, and we can define the notion of civil servants in two ways: in a broad sense and in a narrow sense.

In a broad sense, we understand the person who holds a position in the public administration bodies under the terms of the law. This notion encompasses all the duties and tasks of those who work in local and central public authority bodies.

In a narrow sense, the notion of civil servant determines in a concrete way the respective function established in the respective legal act. In this sense, the person who tends to occupy a public position must meet the specific requirements of the claimed function. In other words, in each concrete case we can determine the notion of civil servant within the Public Service, the person who tends to call himself a civil servant must correspond to parameters established by law, for the concrete function, starting from occupations, studies, age, citizenship, knowledge of the official language, etc.

The terminology used in other European countries differs from that used in Romanian, the expressions used being equivalent to those of public agent, state official, servant of the crown, public manager, etc., in terms of indicating the gender and not the species (for which, for example, the terms of judge, counselor, minister, etc. are used) [7].

Law no. 159 IIIX/2008 also enshrines the notion of civil servant. Thus, according to this law, "a civil servant means a person who holds a paid state position and who has ranks and degrees, established in accordance with the principles of this law" (paragraph 3 of article 1). But the legislator does not limit himself to the definition of the notion of civil servant, but also defines a separate category of "persons with positions of responsibility". Thus, according to this law, "a person with positions of responsibility is a civil servant vested with powers in order to exercise the functions of public authorities or administrative actions of disposition and organizational-economic" (paragraph 4 of article 1).

From the above, it can be concluded that: the civil servant "holds positions", "has ranks and degrees", while the person with positions of responsibility is also "invested with powers in order to exercise the functions. In the opinion of some authors, any position is one of responsibility [8], because it is established for the purpose of satisfying a public (general) interest, and the civil servant holds a position in order to exercise certain powers with which he is legally invested [9]. Some authors argue that it would be welcome to replace the phrase "person with a position of responsibility" with "person with a decision-making or management function" [10]. All the more so, this notion is also used in the text of the Law on Administrative Litigation [11]. According to paragraph 15, art. 2 of this law, "a civil servant is a person appointed or elected to a decision-making or executive position within the structure of a public authority".

According to the Statute of Civil Servants in Romania, the civil service represents the set of duties and responsibilities established by the public authority or institution, for the purpose of realizing its competences, and the civil servant is the person appointed to a public position, all civil servants in public authorities and institutions constituting the body of civil servants.

The notion of civil servant in our country differs from the treatment of this notion in other countries. For example, in France, Belgium, the Netherlands, Portugal, etc., in addition to management personnel,

the qualification of civil servant is held by any employee in the field of education, health care, communal and recreational services, in other areas of serving the population and providing services [12].

A democratic state that ensures the participation of the people in the management and implementation of public interest activities establishes, for the implementation of these activities, public functions accessible to all citizens under the conditions established by law. Access to public functions in our republic is guaranteed and conditioned by law. The right to engage in public service, according to legal provisions, is enjoyed by citizens of the Republic of Moldova, regardless of race, nationality, gender, religion, other criteria, and to whom the restrictions provided for by law do not apply.

In order for the public service to be legal, it is necessary that the positions and officials within this service have a legal investiture. The legality of occupying public positions is determined by law. Occupying a public position is done through hiring, election and competition. The legislator has established various ways of occupying public positions and determined them according to two criteria.

Specialist positions in the public service are filled through hiring and competition. The investment of public officials in management positions is done through appointment, election and competition. Once hired, public officials certainly have rights, obligations and, respectively, bear legal responsibility for their activity.

In the field of research on the phenomenon of social responsibility, implicitly the legal one, great progress has been made in recent decades, both in terms of the analysis of the phenomena of legal responsibility, and in the broader plan of the dialectical relationship between social responsibility and social responsibility. From this perspective, the research on legal responsibility, as a complex institution of law, its forms, as institutions of different branches of law, must go beyond the traditional framework of legal technicality, achieving a greater openness towards philosophy, psychology, sociology, etc. [13].

A. Iorgovan specifies that in the field of legal science, the distinction between the notions of responsibility and accountability is also emerging, a distinction that has its origin in contemporary philosophical theses regarding the delimitation of the phenomenon of social responsibility from that of social responsibility [14].

According to A. Iorganov, this distinction is highlighted in terms of administrative law in several aspects. First of all, administrative law analyzes responsibility, and respectively, the liability of state administration bodies, secondly, administrative law analyzes these phenomena in relation to civil servants and thirdly, administrative law is concerned with the research of citizens' responsibility towards legal norms, respectively their liability in case of their violation.

Starting from philosophical research on the issue of responsibility, Professor A. Iorgovan emphasizes that this notion designates the active, conscious reporting of the agent of social action to the norms and values of the community, established at a micro and macro social scale. In the case of responsibility, the agent of action, to use this term specific to praxiology, fully engages in the accomplishment of the tasks set for him, in the activity of achieving the objectives of society, identifying them with his own values.

Therefore, speaking about responsibility in the case of civil servants means the existence of a caring action towards the problems of citizens, their involvement with objectivity and professionalism in carrying out the tasks of their functions, functions understood as true social missions. For a civil servant characterized by a high spirit of responsibility, there is no more important value than the fulfillment,

with a conviction arising from the rational understanding of phenomena, of the tasks of his function. Such a type of civil servant is possessed by a feeling of guilt when something was not in order in his work, even if it is a less important aspect, which for an uninformed eye is not noticeable. Civil servants in this category are possessed by a permanent inner restlessness, in the most beautiful sense of the term, to solve the problems that fall within their competence, in an irreproachable manner.

This constant concern and agitation for improving the activity has nothing in common with the "face-to-face" work, with the directed, untimely and often ostentatious agitation of those civil servants who want to stand out "in the eyes of their bosses", who feel the need to always be the center of attention, to get involved in all the problems, although, in reality, they complicate things more than they contribute to the effective resolution of at least one of the ones for which they declare themselves to be high-class specialists [15].

The public servant characterized by social responsibility works well, correctly, not at all "for the eyes of the boss" or with the thought of advancing ahead of other more deserving civil servants than him, but because this is his way of being, this is how he understands life and implicitly "the job", otherwise he cannot live. To ask a civil servant from this beautiful human gallery to write, for example, a superficial report and possibly reach certain conclusions suggested by the boss, not covered by reality, is equivalent to asking him to do himself a very great harm. When there are, however, such "pressures", civil servants of such a moral nature have very categorical replies, in an unequivocal manner [16]. Types of this kind of civil servant offer us fiction from antiquity to the present day. Many preferred to drink their cup of poison, to climb the steps of the scaffold, to endure the mistreatment and torture in the torture chambers, to take the path of exile; but they did not abdicate their principles regarding the way in which they understood to exercise the prerogatives of the public office they held.

The training of such officials in the conditions of modern society is a permanent concern not only of theoreticians, but also of legislators and governors, in some countries it is a real cult for the public office and the public servant.

A special dimension in the process of forming the spirit of responsibility of public officials has, as is self-evident, the school in which they are trained as specialists, as professionals in administrative matters. That is why, within the process of instruction and education of those who are preparing for public administration positions, a more accentuated combination of all educational factors must be achieved. It is not, however, without relevance for instilling in the souls of high school students or in the souls of students in higher administrative education the love and passion for the "profession" of administrator, the way in which the legislation in force enshrines the guarantees of their professional achievement, the prospects for evolution in this career. So, the legislation in force in our country is still far from having such a psychological impact on young people, who have arrived, in their overwhelming majority by chance, in administrative education. There are aspects on which I do not think there is time to reflect, but simply need to act.

Research in the science of administration worldwide has revealed, especially through surveys and investigations, that a large part of civil servants work conscientiously, but without particular enthusiasm, but simply because they have a position from which they receive a reward and are animated by the natural feeling of maintaining it. It depends very much on the qualities of the one who leads the collective in which such civil servants exist for them to become

civil servants with a high spirit of responsibility, in the sense specified above. Also, among civil servants there appears the type of civil servant who seeks to "spin", to slip away or the civil servant who gets involved only when he feels the danger of a sanction.

Taking into account this heterogeneity of the typologies of civil servants, in terms of the degree of responsibility, principles can be established and, accordingly, legally enshrined, by virtue of which their stimulation can be achieved, in which sense the question of the advancement system and, accordingly, the salary system arises.

Practical recommendations relating to the application

The analysis of the legal regime of civil servants' liability, from a comparative law perspective, allows the following fundamental conclusions to be drawn:

• *Historical roots and state stability:* The institution of civil service, with origins in Roman and Byzantine antiquity, has consistently demonstrated that good state administration is inextricably linked to the civil servant's legal and economic status. As highlighted in the doctrine, the precariousness of remuneration or the uncertainty of stability in office undermines the foundations of the state apparatus, generating inefficiency and corruption [17].

• *Duality of the legal regime:* Unlike other European systems, the regime applicable to civil servants in the Republic of Moldova presents a hybrid nature, where public law norms (Law no. 158/2008) intersect with private law norms (Labor Code), creating a complex framework for engaging in legal liability [18].

• *The need for terminological clarification:* The study reveals a deficiency in the definition of "person with a responsible position", and it is appropriate to replace this phrase with that of "person with a decision-making or management position", in order to align national legislation with the standards of precision found in comparative administrative law (e.g. Romania or France) [19].

• *Restrictive vs. extensive approach:* While countries such as France or Belgium include almost all employees in the education and health sectors in the category of civil servants, the local model maintains a more restrictive vision, focused on the exercise of public power prerogatives. This distinction directly influences the applicable forms of liability, placing increased emphasis on administrative and criminal liability [20].

• *Evolution towards social responsibility:* The legal liability of civil servants has ceased to be a simple technical sanction, evolving towards a complex institution that integrates ethics, psychology and sociology. Holding a public office through competition and meritocracy is the premise of a real responsibility towards the general interest [21].

Based on the analysis of the legal regime of the civil servant and the deficiencies identified in comparison to European standards, here is a set of practical and de lege ferenda recommendations aimed at streamlining the accountability mechanism:

1. Clarification and Uniformization of Terminology

• *Proposal:* Replacing the ambiguous phrase "person with a position of responsibility" in Law no. 158/2008 with the term "person with a decision-making or management function".

• *Purpose:* Alignment with the terminology used in the Administrative Litigation Law and avoiding confusion when engaging legal liability for acts of disposition.

2. Implementation of a Competitive Salary System

• *Recommendation:* Periodic review of salary coefficients to ensure remuneration that reflects the degree of responsibility and the risks of the position.

• *Justification:* As Stendhal emphasized, underfunding public office is an indirect invitation to corruption ("the state organizes theft and misery"). A decent salary is the first barrier to protecting integrity.

3. Strengthening Stability in the Job through Meritocracy

• *Recommendation:* Strict respect for the public competition procedure for all categories of civil servants, eliminating unjustifiably prolonged interim appointments.

• *Purpose:* Protecting civil servants from political interference and ensuring an institutional memory necessary for good administration, according to the French or Belgian model.

4. Rigorous Delimitation of Patrimonial Liability

• *Proposal:* Introducing clear criteria in the Labor Code or in the special law to differentiate between admissible professional error and serious negligence.

• *Purpose:* Preventing "decisional paralysis" among civil servants, who could avoid signing necessary documents for fear of subjective patrimonial recoveries.

5. Digitalization of the Disciplinary Sanctions Register

• *Recommendation:* Creating a centralized database (managed by the State Chancellery) that highlights disciplinary sanctions applied and those that have become final.

• *Purpose:* Ensuring transparency and preventing the re-employment in other public institutions of persons who have committed serious violations of administrative ethics.

6. Expanding Ethics Training Programs

• *Recommendation:* Mandatory introduction of modules on forensic psychology and applied ethics within the training courses at the Academy of Public Administration.

• *Justification:* Liability should not be just a sanction, but a form of social responsibility consciously assumed.

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