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PhD THESIS SUMMARY

Dimensions of the administrative-patrimonial liability for the act of public power in the rule of law - *interdisciplinary perspective*

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"We are fully responsible for what we are, what we have, what we become and all that we succeed."

Peter Arnold

In the realm of the requirements before which the administration of the rule of law seeks to satisfy the public interest at all times, situations where the public administration must respond for damages created through the acts generated by its authorities, through the lack of diligence of the official and even through the limits of the public service cannot be endlessly avoided.

Like all human activities, public administration can be wrong. And again, like all of the, it can and must be held accountable for its faults.

The public administration is responsible for its acts and deeds, thus where its activity is causing moral and material harm, it should come forward and incur a patrimonial response.

The authors of administrative law claim that administrative liability constitutes a form of legal liability which is trained whenever the rules of administrative law are violated, by committing an unlawful act, which is generically referred to as administrative misconduct[1].

In this context, by drafting this work, we mainly aim to analyses administrative accountability as a form of legal liability and, in the alternative, to delimit the administrative-patrimonial liability from civil-tort liability, in a multidisciplinary manner, by reference to the forms of liability existing in the theories of social, political and administrative sciences.

By analyzing the evolution of administrative accountability, we can observe that this institution has been difficult to contend in the Romanian doctrine, the opinions expressed in specialized literature varying from the argumentation of its existence to the denial of the identity of the administrative liability forms or of the applicable legal regime.[2]

Liability was frequently compared to responsibility. Thus, in the contents of thesis, as we talk about administrative accountability, we will not disregard the concept of responsibility and, implicitly, other types of liability, such as moral, political or social liability, as such concepts can only be defined in relation to the others.

The expected novelty element of this research work is mainly given by the analysis of accountability for the public administration's actions.

As a preliminary statement, we note that our law provides no express regulation concerning the administration's liability for its unlawful.

What we know until this moment, is that the main characteristic of the administration's liability for its acts is the existence of fault.

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[1] Emil Bălan, *Procedura administrativă*, Publishing House Editura Universitară, București, 2005, p. 29.
[2]Cristi Iftene, *Răspunderea administrativă, formă* a răspunderii juridice, în *Administrative Codification, Theoretical approaches and requirments of the practice*, Wolters Kluwer Publishing House, Bucharest, 2017, p. 220.

In addition to the liability of the administration for its acts, we also identified the liability of the administration for its deeds, namely an objective liability of the administration's liability.

We will see that, as we advance with the research approach, the countless, specific features of the administration's accountability lead us to the conclusion that the purpose of these types of liability is to protect the public interest.

In the beginning of the research approach, we carried out a broad information activity on the specificity of the public administration, on what the public power means, on acts and deeds emanating from the public administration, on the rule of law in which administrations are built to meet the needs of the citizen, bending both over the administrative practice and the theories developed in the field until now.

Following the conduct of the initial documentary research, finding that one of the subjects less dealt with in the doctrine and specialized literature relates to the responsibility of the administration for the act and the deed of public power, we have focused our attention towards this subject, trying to build a series of assumptions and research questions to help us find out, finally, how the public administration responds, in particular, in those situations where it must be held responsible for the acts and deeds emanating thereto.

So, starting from factual realities, from theory, but also from judicial practice, we have shown in the research paper to what extent the public administration must be held responsible for its acts and deeds, as it is necessary, thus where its activity is causing moral and material harm, it should come forward and incur a patrimonial response.

Furthermore, we have shown all the considerations which led us to conclude that the liability of the administration, both for its acts and for its deeds, is a distinct institution, fully autonomous from the civil liability.

The Romanian society is constantly changing from an economic, social, political, civic point of view because of the dynamics in seeking alignment with the requirements imposed by the Union space.

In this transformation of Romanian society, the public administration cannot be disregarded. In all the complexity of social life, the administration is one of the most important human activities. "*The public administration is inextricably linked to the state.*"[3]

[3] Dumitru Brezoianu, Mariana Oprican, *Administrația publică în România*, Publishing C.H. Beck, Bucharest, 2008, p. 3.

Over time, the notion of public administration has experienced various acceptions, and the one we consider to be appropriate in the context of the realization of this work is that of Prof. Andre de Laubadere, who states that administration is defined as "*the assembly of authorities, agencies and bodies, entrusted under the impulse of political power to ensure multiple interventions of the modern state*"[4].

The Romanian public administration operates under the regulations of the Romanian Constitution[5], as well as under the legislation developed in compliance with the constitutional principles, mainly: Local public administration law no. 215 of 2001[6] (republished in 2006). The decentralization framework law no.195 of 2006 and the methodological rules for its application; Law no.273 of 2006, on local public finances. The public service is also governed by Law no. 51 of 2006[7] on public utilities community services.

Thus, it can be observed that the power of public administration has its source in the law, which can confer discretionary powers on public administration authorities to carry out their own tasks[8]. These powers are exerted on citizens, not only through the enforcement of the law, but also through the provided public services, by granting permissions and authorisations[9]. The specialized literature in the field underlines the importance of the notion of public service, showing that administrative law itself is defined by two fundamental notions: organic (i.e. legal person of public law) and material, which refers to the public service[10].

The importance of the public service is even greater since the state and its other units are "*indispensable tools designed to provide its citizens with that summum of well-being that they cannot otherwise find*"[11]. The notion of public service is therefore inextricably linked to that of the public interest and can be defined as "*the activity carried out by an administrative authority (administrative body) or public agent (state/private) in order to satisfy a general interest*"[12]. It is important to note that legal empowerment is an essential condition for the legitimacy of the exercise of the powers of the administration, but it is not a sufficient condition, and therefore a number of complementary principles are applied that ensure both the good

[4] Andre de Laubadere, *Traite de Droit Administratif*, 6th edition, vol I, Paris, L.G.D. J, 1973, p. 11.
[5] The Constitution of Romanian, amended and completed by the Law for revision of the Constitution of Romania nr. 429/2003, published in the Official Gazzette of Romania, Part I, no. 758 from October 29, 2003.
[6] The law of local public administration no. 215/2001, republished in the Official Gazzette no. 123 from February 20th, 2007.
[7] Law no. 51/2006 of public utilities communitary services published in the Official Gazzette no. 254 from March 21st, 2006.
[8] Emil Bălan, *Procedura administrativă*, University Publishing House, Bucharest, 2005, p. 28.
[9] Emil Bălan, *op.cit*., p. 29.
[10] Corneliu Manda, *op.cit*., p. 291.
[11] Corneliu Manda, *op.cit*., p. 292.
[12] Emil Bălan, *Instituții administrative*, C. H. Beck Publishing House, Bucharest, 2008, p. 129.

conduct of public administration activities and the fair treatment of those administered. These complementary principles are laid down in the procedure and administrative law[13].

Starting from the idea that one of the most important effects of the public interest, which characterizes, we believe, the binding report that arises from an illicit administrative act which is affecting interests, is the inequality of the parties to this report, because one of them does not act in its own interest, but in the interests of all, we consider that the proper functioning of the administration is the primary element preventing its liability and prevents it from causing damage.

Thus, in this thesis, we come to show, first, that the Romanian law system must align with the new requirements governed by European law to good administration, provided for by the Charter of Fundamental Rights of the European Union, and on the other hand, that it is necessary to outline some mechanisms for prevention of the administrative-patrimonial accountability.

In the rule of law, good administration refers, both to respect for the fundamental rights of governed by the governors, but also to the proper functioning of the administration as a system, in compliance with a set of transparent, predictable rules known both by those working in the public administration, but also by citizens, in relation to the fulfilment of objectives that correspond to the needs of the latter.

Therefore, good administration needs to be analysed, not only from the perspective of regulations applicable at some point in a system of law, but also from the perspective of high-performance public management and the efficiency of the administration's activity in the rule of law.

In the presented context, we aim, during the 3 (three) parts of the PhD thesis, entitled: ***Part I: Justice, Responsability, Accountability, Part II: Administrative accountability in the rule of law - national and European context*** and ***Part III: Public policies and mechanisms to attract administrative-patrimonial accountability and to prevent it***, to answer the following research questions:

a. **Is the concept of accountability identified with the one of responsibility?**
b. **Does the administration science specific accountability overlap the accountability of administrative law?**
c. **How is the administration presented as public power?**

[13] Emil Bălan, *Procedura administrativă*, University Publishing House, Bucharest, 2005, p. 29.

d. **What is the place of administrative-patrimonial accountability in the context of administrative accountability?**
e. **How can the exercise of public power generate situations of attracting accountability?**
f. **What are the subjects of administrative accountability?**
g. **What is the content of the accountability of the state, the public authorities and that of public servants?**
h. **How do we distinguish administrative-patrimonial accountability for public service limits of civil-tort liability?**
i. **What administrative procedures can be used to employ administrative-patrimonial accountability for public service limits?**
j. **What is the role of good governance in public administration?**
k. **Malfunctioning of the public service can cause damage to the individual?**
l. **How can the damage caused by the administration be repaired through its authorities or its officials?**
m. **How could management be improved at the level of administration in order to prevent accountability situations?**
n. **Are there any public policies to prevent state accountability for damage caused by public authorities or civil servants?**
o. **Are regulations in the Romanian State, in matters of administrative-patrimonial liability, sufficiently well systematized?**

To illustrate, why administrative accountability must be analysed in the context of the rule of law, we show that the genesis and evolution of the institution of administrative

accountability are almost inextricably linked to the emergence of the rule of law[14], from the moment its main elements arose.

As we observed, the administrative accountability-form of legal liability, particularly important in the realm of the rule of law, was long-disputed by the doctrine, which did not identify it as an individual form of liability but assimilated it to other forms of legal liability.

The idea of an administration that can function in a defective way and can come to answer for its malfunctioning, has existed since distant times.

In the present form, administrative accountability arises as a complex institution, with the basis of its attraction in administrative misconduct – disciplinary, contravention, patrimonial, being recognized by the administrative authors but challenged, still, by supporters of the civilistic theses, especially in terms of administrative-patrimonial accountability, often assimilated to civil-tort liability.

By reference to the context presented, the research was designed according to the pursued aim, taking into account 4 (four) main objectives, each main objective being followed by a series of secondary objectives as follows:

- **O1: Interdisciplinary analysis of justice, responsibility and accountability**
    - Secondary objectives:
        - Analysis of the concept of justice in the context of the rule of law;
        - Delimitation of responsibility from accountability;
        - Interdisciplinary analysis of the prospects of accountability.
- **O2: Study of the rule of law. Analysis of administrative accountability as a form of legal liability in the rule of law**
    - Secondary objectives:
    - Analysis of administrative-patrimonial accountability as a form of administrative liability. Studies of doctrine and case-law;
    - Research of issues related to administrative-patrimonial accountability for acts and deeds of public power.
- **O3: Main objective: Research of administrative-patrimonial accountability issues for public service limits**

[14] Cristi Iftene, *op. cit.*, în *Administrative Codification, Theoretical approaches and requirments of the practice*, Wolters Kluwer Publishing House, Bucharest, 2017, p.227

- Secondary objectives:
  - Doctrine and case-law analysis of administrative-patrimonial accountability for public service limits;
  - Delimitation of administrative-patrimonial accountability for public service limits from civil-tort accountability;
  - Administrative procedures used to employ administrative-patrimonial accountability for limits of the public service - administrative contentious.

- **O4: Identification of mechanisms for the prevention of those situations that lead to administrative-patrimonial accountability**
  - Secondary objectives:
    - Identification of the ways to implement standards of good governance;
    - Identification of compensation mechanisms to compensate for damage caused to individuals by the limits of the public service.

The methodology of a scientific research, in the field of Administrative Sciences, gives the researcher the opportunity to interpret the reality corresponding to this area as accurately as possible, by reporting it to the requirements given by the permanent changes of the administration.

The development of a research work cannot be carried out by chance, but it is necessary that, independently of the field that is being investigated, the researcher identifies the methodology and technique of research that adapts to the proposed research approach.

In view of these considerations, in order to verify the achievement of the proposed objectives, we have conducted a multidisciplinary analysis of accountability relative to political sciences, social sciences, administrative sciences, and legal sciences.

An important dimension in the research of this theme is that for the analysis of regulations on public administration's actions they have been compared with the regulations, in the matter in French and Italian law, given that Romania, France and Italy are states of law with a similar legal regime in matters of administrative law.

With regard to the methodological aspects, this work conseiders the qualitative research methods, such as document analysis, regulatory analysis, case-law analysis and the interview.

The choice of the interview as a research method was the direct consequence of the fact that we do not have access to the studied phenomenon – respectively, to the knowledge of

elements related to the motivation of civil servants, as well as their administrative liability in exercising the position, trying to obtain the necessary data by questioning the persons who have some knowledge about the phenomenon we are interested in – thus referred to as interviewed.

Thus, we did not use a large number of cases, as is the case in quantitative research[15], but we tried to obtain the richest answers from each topic, capturing both the specific elements of each case and the elements common to all.

The interview pattern was mostly based on open[16], non-targeted questions, ensuring the interviewed person of the confidentiality and anonymity of his/her replies.

The 1960s marked the development of Administrative Sciences studies. This area, as noted in the specialized literature, covered research specific to various fields of study. In this context, various concepts were outlined, such as:

- Legal conception: its purpose took into account the knowledge of the structure and functioning of the public administration;
- Managerial conception: oriented towards the identification and implementation of management techniques to try and overcome the public-private stereotype;
- The sociological conception, which wanted to record progress in terms of knowledge of the administrative phenomenon with the help of the concepts and methods of sociology.

In this framework, we can say that the administration sciences, summing up a number of mechanisms and procedures specific to several sciences, did not necessarily developed their own research tools. Thus, based, in particular, on the instruments used in social sciences research, in achieving this multidisciplinary research we used, particularly, the instrumentation used in the research specific to this science, as we have shown above.

As much as we wanted to achieve a correct and complete research, as is the case in every scientific endeavor, the present work too has several inherent boundaries, which we have observed, without, however, letting these limits significantly influence the conclusions reached by the research we have carried out.

The limits of the hereby research are structured into two components, determined according to the study we have carried out. We therefore speak of:

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[15] Sorin Dan Șandor, *Metode și tehnici de cercetare în științele sociale, Suport de curs pentru studenții Facultății de Administrație Publică, din cadrul Universității Babeș-Bolyai*, p.137, https://docplayer.net/21004557-Metode-si-tehnici-de-cercetare-in-stiintele-sociale-sorin-dan-sandor.html, accessed on 12.01.2019.
[16] Sorin Dan Șandor, *op.cit*., p.137.

1. Theoretical research limits;
2. Empirical research limits.

Of course, perhaps the first and the foremost limit of this study, which is worth remembering, is the subjectivism of the researcher, determined by his/her cultural and scientific level.

As for the first point, namely, the limits of theoretical research, we state that the present study is dependent on existing documentary sources, analysed only partially, being almost impossible to study, in detail, all the rules and documents applicable, at some point in a given area.

Literature specific to the patrimonial accountability of the administration is still in its early stages, the bibliographical sources being limited.

The iconography of the oldest of the specialized works and the language used often refer to the assimilation of this accountability to the specific civil law, which makes the structuring of ideas very difficult.

Foreign literature in the field does not fundamentally deal with the accountability of administration in Romanian law, aspect relative to which we can only issue comparative ideas.

Regarding the empirical research limits, we cannot say that our research has led to the creation of new theories, instead, through theoretical research we have succeeded to focus, structure and synthese the most important pluses and minuses that could represent a strong incentive to assess future trends.

The empirical research carried out consisted in the application of the interview.

In this respect, a first identified limit was determined by the rigidity between the researcher and the respondents, by applying questions in a formalised manner, from a field which, psychologically speaking, creates a state of discomfort, especially for those who at some point, were held accountable. We tried to mitigate this limit by giving to the respondents the possibility to freely comment after each question.

Another limit is determined by the ability of the interviewed persons to objectively assess the research phenomenon. At the same time, elements such as their scientific level, their prejudices could influence more or less the truth from the events researched.

In addition, the population from which we extracted the sample, is limited only to professionals in the field of local public administration.

Regarding the remarkable findings of the research approach, they were divided by reference to the three parts of the thesis.

Thus, by conceiving **the first part of this thesis**, we intended, in the light of the proposed methodology for the research of the theme, the following aspects: the achievement of objective number 1 (one), respectively, The interdisciplinary analysis of justice, responsibility and accountability, as well as the fulfilment of the secondary objectives related thereto, respectively, 1) the analysis of the concept of justice in the context of the rule of law, 2) delimitation of responsibility from accountability and 3) Interdisciplinary analysis of the prospects of accountability.

At the same time, we wanted to answer the following questions: 1) Is the concept of accountability identified with the one of responsibility? 2) Does the administration science specific accountability overlap the accountability of administrative law?

Consequently, during the first part, they retained the following conclusions:

- ✓ Part I reflects importance in achieving this research, as on the one hand, historical and methodological issues are highlighted, and on the other hand, it allows an interdisciplinary understanding of accountability, the basic theme of the hereby study.
- ✓ During the first part, we showed that, in our opinion, law cannot exist outside the state, because it is the state that can confer on certain rules the character of legality and compulsiveness, by applying coercion methods, but similarly, the state is the one that should be held accountable in certain situations, particularly in those situations where the citizen is being harmed because of its defective operation or even because the legislature fails to regulate situations in which it should be responsible.
- ✓ For the purpose of developing the theme, we considered it necessary to explain some notions in relation to which responsibility should be investigated, so we showed that in close connection with the concept of accountability, lie the concepts of justice, responsibility and even constraint.

  As far as we are concerned, we take the opinion that the sign of equality cannot be placed between accountability and responsibility, the two relying on different factors. In other words, accountability is a concept that takes into consideration the normative aspect, while responsibility is a valuable concept.
- ✓ In this respect, we made it clear that justice is the virtue of a society, necessarily respected on all the palliations of social life. That is precisely why justice was also acknowledged by the fundamental law of the Romanian state as a supreme value in a rule of law. In the legal-social plan, where the principles of justice are tempered with, accountability should emerge.

At the same time, we appreciated that accountability should also be investigated in the light of its various forms, since:

- ✓ Political accountability always implies taking a position, whether it is carried out by the governed, whether it comes from the legislative body.
- ✓ From the perspective of economic accountability, in public sector institutions, as well as in any other organization, effectiveness has a basic role, because this principle implies achieving the goals of the organisation and, at the same time, achieving the standards, so the objections are certainly clarified from the outset, and in advance, the results can be anticipated and, obviously, measured later.
- ✓ From a managerial perspective, we appreciated that the principle of efficiency is extremely relevant to the coverage of social needs and to prevent the imposition of sanctions similar to those in legal liability.
- ✓ From a legal perspective, accountability is a broad and universally common notion in our system, being interesting to study, especially in the light of the fact that it also includes the component called sanction. The sanction, as we have shown, can be criminal, administrative or can also be civil. As a consequence, we can talk about a criminal, administrative or civil accountability[17], which is, in generic terms, in the concept of legal accountability.

  Of course, these forms of liability may overlap. They may appear to be contestants, respectively, the same wrongdoing may entail both criminal and civil liability.
- ✓ In the design of authors of administrative law, administrative accountability constitutes a form of legal accountability which is trained whenever the rules of administrative law are violated, by committing an unlawful deed, collectively referred to as administrative misconduct.

What should be noted from the outset, in relation to **administrative accountability, is that it must be divided into two categories:**

1. That for administrative acts emanating from the administration;
2. That for its unlawful deeds or for the limits of the public service.

[17] Gabriel Tiță-Nicolaescu, *Câteva delimitări necesare între răspunderea civilă delictuală și răspunderea contractuală în dreptul român*,, Legal Universe Magazine λ No. 11 November 2016, p. 29-37.

In regards to the difference between accountability in the administration sciences and the accountability specific to administrative law, we have shown, by reporting to specialized literature, that the two types of liability overlap.

The conceiving of **Part II of this research** was aimed, relative to the proposed methodology, towards the achievement of Objectives 2 (two) and 3 (three), respectively**: O2: Study of the rule of law. Analysis of administrative accountability as a form of legal liability in the rule of law,** whose related secondary objectives are: 1) Analysis of administrative-patrimonial accountability as a form of administrative liability. Studies of doctrine and case-law, 2) Research of issues related to administrative-patrimonial accountability for acts and deeds of public power and **O3: Research of administrative-patrimonial accountability issues for public service limits** whose related secondary objectives are 1) Doctrine and case-law analysis of administrative-patrimonial accountability for public service limits, 2) Delimitation of administrative-patrimonial accountability for public service limits from civil-tort accountability and 3) Identification of administrative procedures used to employ administrative-patrimonial accountability for limits of the public service - administrative contentious.

At the same time, we intend to answer the following research questions: 1) How is the administration presented as public power? 2) What is the place of administrative-patrimonial accountability in the context of administrative accountability? 3) How can the exercise of public power generate situations of attracting accountability? 4) What are the subjects of administrative accountability? 5) What is the content of the accountability of the state, the public authorities and that of public servants? 6) How do we distinguish administrative-patrimonial accountability for public service limits of civil-tort liability? 7) What is the role of good governance in public administration?

The conclusions drawn from the drafting of the second part are as follows:

- ✓ The notion of "rule of law" is found in various constitutional texts referring to that structure in which the state and the law are in a complementarity report.
- ✓ The main feature of the rule of law is given by the force of the law and not by the law of force, as is the case in the police state.
- ✓ Good governance is, in our view, perhaps the most important way to prevent administrative accountability at the level of the rule of law.

Good governance is not just the exercise of public power, even if the notions seem to be interpolate.

- ✓ In the legal relations in which the state is a party, the report created is one of legal inequality, in the sense of the overordered character of those administering, the state having powers of public power.

  In accordance with the constitutional provisions, but also with respect to organic laws, public power is the authority of public administration defending the public interest, with the following prerogatives:

  When the limits of public power are exceeded, there may be situations of attracting administrative-patrimonial accountability, namely:

  1. The exclusive patrimonial accountability of the state for damage caused by judicial errors;
  2. The public authorities' patrimonial accountability for public service limits;
  3. The joint liability of the official and the public authorities for damage caused by typical or assimilated administrative acts and
  4. The public authority's accountability for damage caused by administrative acts and contracts.

- ✓ During the drafting of the paper, we have shown that the legal literature of administrative law in Romania qualifies the state's accountability for judicial errors as an administrative-patrimonial liability and we have motivated why we are also negotiating this opinion. We believe that the administrative-patrimonial accountability of the state for judicial errors is a hypothesis of objective liability, the state having to answer for the malfunctioning of its service. We have identified the need to clarify certain terms such as that of judicial error and we have established that it acquires its judicial character in the narrow sense of the definition, only when it is contained in an act of the judicial bodies. However, in relation to this aspect, we consider it necessary to clarify the character of the error: subjective or objective. Would it influence the damage compensation? In view of the investigated theme, we have come to the conclusion, by a qualitative analysis, that a number of special conditions are required for the employment of the administrative-property accountability of the state for judicial errors, from which essential are: the error occurred during a judicial procedure and there was a definitive decision stating the error.

In our opinion, administrative accountability for damage caused by the state through judicial errors, belongs in nature to public law and not to private law, and we have expressed our opinion that the law on accountability is insufficient, which is why various solutions occur in the field. With regard to new research drections, in this field, we believe that: the typology of errors and their subjective or objective nature should be established with greater accuracy; the possibilities of granting compensation for moral damage should be expressly regulated; it would be desirable to amend the provisions of art. 96, para. 4 of Law no. 303/2004 on the status of judges and prosecutors in the sense that accountability should no longer be conditional on criminal or disciplinary liability; it should be verified if there are any exonerating causes for liability in the matter.

- ✓ The issue of the administrative act as public power distinguishes it from the acts of the administration issued under common law, the administrative act representing the main legal form of activity of the administration.
- ✓ In addition to the administrative act, the administrative practice should not neglect the administrative deed.

  In our law there is no express regulation of the accountability of the administration for its unlawful deeds. However, as we have pointed out during part III, there are a number of rulings of the Court of Cassation which have decided to commit the state's accountability even if it could not be attributed to a fault, the damage being caused in the exercise of a normal and legal activities.
- ✓ Accountability for the deeds of public administration is often confused in practice with civil-tort liability.

  For all the previously broadly mentioned arguments, we point out that **the sign of equality cannot be placed between the two types of liability**, the former being solely a liability belonging to public law.

  The other extreme must also be avoided, namely considering that whenever the administration or an employee of its own is causing damage to the individual, an administrative liability is in order. This is because it is known that the administration does not always act in its capacity as a legal person invested with public power, sometimes acting as a simple individual.
- ✓ In regards to accountability for the limits of the public service, we believe that in so far as the liability of the administration for its unlawful acts was regarded by our doctrine as an

autonomous accountability, distinct from the civil-tort liability, in the light of the fact that, on the one hand, administrative law is a branch of autonomous law and, on the other hand, that this accountability presents specific features we can also extend this conclusion to the liailityb of the administration for the limits of the public service (its unlawful acts), on the basis of the same considerations.

The limits of the public service, unfortunately, often remain unascertained and the state is not being held accountable on grounds of inadmissibility, since the legislature cannot be so diligent as to foresee all the situations that arise in practice.

- ✓ In France, the authorities come to respond both for the damages caused by the limits of the public service, as well as for the damage caused to individuals by its public servants, and in the event of a fault of their own, the state should proceed against its agents in order to recover the damage caused by such deeds.
- ✓ Italy provided in the Constitution the general principles for the organisation of public administration, applicable to civil servants, and their first status was adopted on November 22nd, 1908.
- ✓ The principle of responsibility of the public employee[18] is primarily established by art. 28 of the Constitution of the Italian Republic, which states: "*Officials and employees of the state and public bodies are directly responsible, in accordance with criminal, civil and administrative laws, for acts committed in the infringement of rights. In such cases, civil liability extends to the state and public bodies."*

- ✓ Practical shortcomings also existed in the accountability of the public servant. The question whether the one to be held liable in one case or another, is the public administration or the public servant has determined the creation, in particular in the French jurisprudence and doctrine, of the *theory of deeds detachable from the public position* which can be summarized as follows: **whenever the official is guilty of causing the damage, by committing an act unrelated to his/her position, he/she will personally respond to the aggrieved person. On the contrary, whenever the public servant's deed is a service act or in connection with the service, the administration will be the one responsible.**

[18] *Vito Tenore, La responsabilita' civile, amministrativo-contabile e penale dei pubblici dipendenti, Lucrarea este un extras din volumul TENORE, Manualul serviciului public privatizat, ce a fost lansat în cadrul Conferinței Școlii Naționale a Administrației de la Roma, din noiembrie 2015, p.1, https://www.unicas.it/media/570414/dispensa_responsabilit_x_corsi_V_T.pdf, accessed on 23.08.2018.*

- ✓ The civil-procedural doctrine[19] has qualified the call for guarantee as "*that form of participation of third parties in the civil process conferring on one of the parties the opportunity to request the introduction into the process of those persons who would have guarantee or compensation obligation and against which it could be directed with a separate action*".
- ✓ Also, in recent doctrine[20] it was shown that "*the procedural provisions in force - art. 72NCPC - do not expressly restrict the possibility of calling the guarantee only to certain matters. On the contrary, the text enshrines the principle that the guarantee call can be promoted whenever the party might proceed against another person with a claim for guarantee or compensation".*
- ✓ What we can say in connection to the above mentioned is that there is no judicial practice in Romania regarding the introduction of the state as guarantor to pay compensation for the damage caused by the administration to individuals. For example, by the Session Conclusion pronounced in the Colectiv File, the court established that there is no legal basis for the introduction of the state in question as guarantor.
- ✓ There is even a solution for admission, by the High Court of Cassation and Justice, of an appeal in the interest of the law, namely Decision No. 10/2011, by which the Court has established that the application made by the public institutions or by credit authorizing officers to call for guarantee the state through the Ministry of Public Finances, on the salary rights of those in the budgetary sector or on financial aid that can be granted to substitute teachers, does not meet the requirements laid down by law.
- ✓ In our opinion, the participation of the Romanian State, represented by the Ministry of Public Finances, as a procedural subject, is consistent with the constitutional role of ruler of public institutions, in view of the fact that, between the authorisation activity and the damage that may be caused to individuals, there may often be causal links.
- ✓ Therefore, the need to participate as a procedural subject of the Romanian state may result from such circumstances. The limits of the public service, unfortunately, often remain unascertained, and the state is not being held accountable on grounds of inadmissibility, since the legislature cannot be so diligent as to foresee all the situations that arise in practice.

[19] Ioan Deleanu, *Tratat de procedură civilă*, vol.I, Wolters Kluwer Publishing House, Bucharest, p.344; Ioan Stoenescu, S. Zlberstein, *Drept procesual civil*, Didactic and Pedagogic Publishing House, Bucharest, 1981, p.307.
[20] Ioan Leș, *Noul cod de procedură civilă. Comentariu pe articole*, art. 1-1133, C. H. Beck Publishing House, Bucharest 2013, p.78.

- ✓ The omission of the regulation can create major damage, both of a moral nature and especially of a patrimonial nature.
- ✓ Although national courts do not introduce the state in cases relating to the payment of compensation to persons patrimonially or morally aggrieved by the administration, before ECHR, Romania was ordered to pay the damages caused by breaches of the rights of individuals guaranteed by the European Convention on Human Rights, as we are to observe in the subsection entitled *Jurisprudence at internal and European level*.

In what regards the realisation of part III of the work, we aimed to achieve objective no. 4, respectively **O4: Identification of mechanisms for the prevention of those situations that lead to administrative-patrimonial accountability**, whose related secondary objectives are: 1) Identification of the ways to implement standards of good governance; 2) Identification of compensation mechanisms to compensate for damage caused to individuals by the limits of the public service.

Also, the research questions that we intend to answer are the following: 1) What is the role of good governance in public administration? 2) Malfunctioning of the public service can cause damage to the individual? 3) How can the damage caused by the administration be repaired through its authorities or its officials? 4) How could management be improved at the level of administration in order to prevent accountability situations? 5) Are there any public policies to prevent state accountability for damage caused by public authorities or civil servants? 6) Are regulations in the Romanian State, in matters of administrative-patrimonial liability, sufficiently well systematized?

Consequently, following the specific research of part III of the thesis, we retain the following conclusions.

- ✓ Although insufficient, the citizens aggrieved by the administration have leverage at hand, through which they can recover the value of the caused damage.
- ✓ Law No. 554/2004 on administrative contentious, in force, is the normative act according to which the *person aggrieved in his/her right or in a legitimate interest by public authorities by means of unlawful administrative acts or by refusing to resolve application, is entitled to the recognition of the claimed right or legitimate interest, the annulment of the act and the repair of the damage.*
- ✓ In order to avoid damaging situations for individuals and implicitly of situations in which the administration must be held accountable for its malfunctioning, we consider that **a**

necessary first step in order to improve the relation public administration – citizens would be that of recognition through the fundamental law of the Romanian State of the right to good administration as a fundamental right.

- ✓ In relation to the citizens, the public servant assures the interface of the administration, so that the proper functioning of the administration depends to a large extent on how the employee in the service of the state transposes the administrative rules in his/her relationship with the individual.
- ✓ In order to respect the principles of good administration, changes are necessary at the level of the perception and motivation of public administration employees towards the institutions in which they work.
- ✓ The need for high-performance public management is necessary. Public organisations must comply with all management functions to make it a quality one.
- ✓ With regard to the questions for which we have proposed to identify responses during this part:
    - We have shown why we must align to European standards for compliance and regulation in our country of the right to good administration;
    - We have presented a number of causes of malfunctioning of the public service;
    - We have shown that for a high-performance public management it is necessary to turn our attention to the experience of Western countries, in the sense that it is necessary to orient ourselves to the professionalism of public services and the preparation of the public servants;
    - We have not identified public policies outlined to prevent the creation of damage by the administration to individuals, thus implicitly, for the prevention of State accountability through the authorities of the administration or through its officials, but we appreciate that they can be drawn up in accordance with the rules for elaboration of public policies and by reference to the principles governing the institution of accountability.

In the present form, administrative accountability is very complex, with the grounds for attracting it in the administrative misconduct – disciplinary, contravention, patrimonial, being recognised by the administrativists, but still challenged by the advocates of civil theses, especially in terms of administrative-patrimonial accountability, often assimilated to civil-tort liability.

In relation to civil accountability, which is often regarded as a purely subjective liability, in the case of public power accountability, it is difficult to distinguish, with certainty, whether it is of an objective or subjective nature, since its character is extremely complex based on the theories of "service risk" and the theory of "the malfunctioning of the service", we can distinguish between "objective" accountability and accountability "based on fault" of the administration for the damage produced to third parties by acts of public power.

We believe that following the research of this theme, it seems appropriate and necessary that all normative acts with applicability in the field of accountability of the administration be placed in the code.

The types of liability are inextricably linked, and must be contained in a single system of rules, ensuring consistency, safety in application and, in particular, a unified practice across all areas of competence, because on the one hand, it is difficult for the individual to study all the relevant rules in order to be able to defend himself/herself from the unlawful acts and deeds of the administration, but on the other hand, because the courts do not have uniform solutions to similar factual and law situations, which have been deducted from judgment.

As long as there are conflicting decisions in similar situations, with regard to the accountability of the administration, the perception of those who administer cannot be changed in wha concerns the way they have to do so. We are aware that pending the delivery of unitary solutions in cases concerning the administration's accountability for its acts, it is a difficult and troublesome road to travel, also accentuated by the frequent legislative amendments and additions, but also by the various views of the doctrine makers.

Therefore, we believe that it seems appropriate and necessary that all normative acts with applicability in the field of accountability of the administration be placed in one administrative code.

In this respect, we show that the Government's priority on the drafting of codes, in order to simplify legislation, is reiterated in the strategy for strengthening public administration 2014-2020, approved by HG No. 909/2014, and in the Strategy on better regulation 2014-2020, approved by HG No. 1076/2014.

In the year 2011, a first draft of the Administrative Code was finalised, which, starting with 2014, was updated from the perspective of legislative changes and of new proposals to amend normative acts at different stages of drafting at MDRAP level.

In the year 2019, the Administrative Code found a new update, in the latter variant, in art. 571 – *Forms of legal accountability in public administration*, express indications concerning the training of administrative accountability in the event of unlawful deeds by

public administration personnel. We consider that this is a step forward in resolving the shortcomings of the administration's accountability for the unlawful deeds, the correction and improvement of the activity that civil servants and contractual personnel conduct every day in carrying out their tasks.

To all presented aspects, for a good administration, all its elements must be considered, i.e. high-performance public management, efficiency and effectiveness in the activity of public administration, recruitment and training of quality personnel, responsability and control, the right of every person to impartial and correct service, the citizen's rights of defense.

During the work, we also showed why we must align with European standards for compliance and regulation in our country of the right to good administration;

Furthermore, in the dedicated sections of this research, we did not neglect the role of the European Court of Human Rights and the Court of Justice of the European Union, and of their case-law, in respect to the right of any person to compensation of damage created by the state.

Finally, in the light of all the aspects detailed in the PhD thesis, we consider that the role of this research, together with the other research efforts carried out in the field, is necessary both for the legislator and for those working in public institutions, as well as especially for citizens, who represent the most numerous body of beneficiaries of the administration's activity.

The public administration is required, by the members of the society, irrespective of the position it occupies therein, to be successful, to carry out its tasks in full competence, without bias, with celerity, continuously report in to the complexity of the problem it must solve.

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