REZUMATUL ÎN LIMBA ENGLEZĂ AL TEZEI DE DOCTORAT

Key-words: public service, public servant, official of the European Union, disciplinary liability, financial liability, criminal liability, European Union

The doctorate thesis is the result of an analysis on ***The legal regime of the liability of the public servant in the European Union***, starting from the notions, the concepts and the specific sentences of the above mentioned topic, as taken out of an extensive documentation carried on under the careful guidance of the scientific leader, Ph.D. Professor Ioan Alexandru. In our research, we have used both the deductive method, following the analysis of the legal texts and of the doctrinal discourse, and the comparative method, through which we tried to emphasize the specific regulation of the legal regime of the civil service in different societies or law systems.

The paper is structured in two parts. In the first part, entitled „The public service – a specific form of implementation of the functions under the rule of law", comprising of two chapters, I have decided to give answer to questions that we considered important in our area of research, such as:

- the idea of separation of powers has always allowed the determining of the exact boundaries between the legislative power, the executive and the judiciary?
- the notions of „body", „service" and „public power" are identical?
- the civil service in Europe is regulated only at the constitutional level or has a proper regulatory framework?

In Part 2 of the doctorate thesis, comprising of three chapters, which refers to the actual examination of the legal regime of European civil servants, we investigated the types of liability applicable to them, with special regard to the disciplinary liability. The findings and the differences to the Romanian system, as well as some suggestions for

improving our country's laws, in light of the newly acquired status of membership of the European Union, are placed in the last chapter of the paper.

In developing the doctorate thesis we considered the main objective to be the research and the analysis of the legal regulation of the European civil servant in what concerns the liability of the European civil servant, the conceptual boundaries in regulating the European civil service, the constitutional and legal regulation of the civil service in different European countries and, especially, the research of the jurisprudence of the Court of Justice of the European Union, in order to identify the practical aspects of the liability of the European officials. In achieving this goal, we have completed the research of the European Union law and doctrine referring to the civil service with the research of the European Courts' jurisprudence, an approach which was largely facilitated by the publication of the solutions given in the cases before these courts in the Official Journal of the European Union and on the website of the Court of Justice of the European Union.

The study material consisted of the specialized work in the field, both the Romanian ones and the ones in the European literature, as well as the legislation, both the Romanian and the one of the European Union, since the specialized literature includes different approaches to the area of research that I proposed to deepen.

I hereby remember a few references[1], both in the national and the international bibliography: Ioan Alexandru, *Tratat de administraţie publică*, ed. Universul Juridic, Bucureşti, 2008; Ioan Alexandru, M. Cărăuşan, S. Bucur, *Drept administrativ*, ed. Lumina Lex, Bucureşti, 2005; Ioan Alexandru, *Administraţia publică-Teorii. Realităţi. Perspective*, ediţia a IV-a, ed. Lumina Lex, Bucureşti, 2007; Ioan Alexandru (coordinator), *Dreptul administrativ în Uniunea Europeană,* ed. Lumina Lex, 2007; Ioan Alexandru, *Drept administrativ european,* ed. Lumina Lex, 2005; Ioan Alexandru, *Drept administrativ comparat*, ed. Lumina Lex, 2003; Ioan Alexandru, *Politică, administraţie, justiţie*, ed. All Beck, Bucureşti, 2004; Ioan Alexandru, *Teoria administraţiei publice*, ed. Economică, Bucureşti, 2001; Ivan V. Ivanhoff, *Deontologia funcţiei publice*, ed. University Press, Târgovişte, 2004; Marius Profiroiu, Anton

[1] The references used in our research is attached to the doctorate thesis and includes 240 titles, reffering to both Romanian and foreign authors, and also an index of European law, which refers to 185 cases of the European Union courts.

Parlagi, Eugen Crai, *Etica şi corupţia în administraţia publică*, ed. Economică, Bucureşti, 1999; Verginia Vedinaş, *Statutul funcţionarului public*, ed. Nemira, 1998; Verginia Vedinaş, Constanța Călinoiu, *Statutul funcţionarului public european*, ediția a II-a, ed. Universul Juridic, Bucureşti, 2007; M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, *Constituţia României - comentată şi adnotată*, R.A. Monitorul Oficial, 1992; Ioan Muraru, Simina Tănăsescu, *Drept constituţional şi instituţii politice*, ed. Lumina Lex, 2001; Pierre Mathijsen, *Compendiu de drept european*, ediția a 7-a, Editura Club Europa, 2002; Iulian Nedelcu**,** *Elemente de drept administrative şi ştiinţa administraţiei*, ed. Universul Juridic, Bucureşti, 2009; Jacques Ziller, *Administrations comparee, Les systemes politico-administratifs de l'Europe des Douze*, Montchrestien, Paris, 1993 etc.

Besides this, the Internet has been an extremely useful tool, by accessing the information contained on sites of the European institutions. I emphasize that the interim results of the research undertaken during the preparation of the doctoral thesis were submitted and supported by participating in several national and international scientific meetings and through publication of scientific studies abroad, due to the desire to deepen the concepts approached throughout the research. Also helpful, especially in preparing the second part of the thesis, presented the research of the jurisprudence of the European Union courts in civil service matters, reflected, moreover, in the publishing, as coauthor, of the book „Rights and fundamental freedoms in the Court of Justice of the European Union – the freedom and non-discrimination principle" by Hamangiu Publishing House, Bucharest, 2010 (ISBN 978-606-522-310-3).

In terms of opportunity of the research topics, I consider it to be significant in relation to current realities, as it is a fact already known that the construction and the consolidation of democracy requires not only a political and economic reform of the society, but also an administrative reform at all levels and thus, implicitly, a reform and modernization of the public service. Democracy depends on the respect of the democratic values, but also on the effectiveness of those holding public offices, regardless of their position in the administrative hierarchy. The novelty of the thesis is the contribution, through the scientific approach, in analyzing the jurisprudence of the European Court of Justice on liability of the European public official, as well as the suggestions to improve the Romanian legislation.

Thus, the research we undertook is more present, since on December 1st, 2009 entered into force the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, ratified by Romanian Law no. 13/2008. It offers the European Union modern institutions and optimized working methods to meet effectively the challenges of today. In a rapidly changing world, Europeans expect the EU to approach and to provide solutions for issues such as globalization, climate change and demographic and energy security, and the Lisbon Treaty strengthens democracy in the European Union and its ability to promote the everyday interests of its citizens.

In our scientific approach we emphasized the main theoretical aspects of the idea of legal liability and the delimitation of this concept of the responsibility, and of the various types of liability applicable to public officials, by the European dimension of the public office, particularly the need for a body of civil servants comprising of specialists whose skills are selected and rigorously tested. Thus we noticed that the regulating the civil service also foreshadows, in addition to the requirements of professionalism, efficiency, responsibility, honesty, dynamism, which are of paramount importance, the necessity of strict adherence to constitutional and legal regulations, but also a real bend to the demands and needs of every citizen with whom those appointed to carry out public functions are in contact. All these principles are the basis of the social responsibility of the public servant and, from this perspective, democracy is not only a principle of political organization but as a principle governing human relationships.

The specificity of the liability of civil servants is given by circumstances of the place, time and manner to commit illegal acts, on one hand, and by the qualification of the subject required to have the quality of the public servant (an active subject in terms of committing the offense and a passive subject in terms of liability).

As Ph.D. Professor Nicolae Popa also states, the question arises on „what legitimizes the penalty, and the rights of the people to punish others? The answer might be: nothing else but the interests of society to defend itself against those who hurt it”[2].

The doctorate thesis does not aim at achieving a thorough analysis of the history of the European civil service or its typology, since such themes, as shown in the bibliography attached to it, have already been the object of several specialized works,

[2] Nicolae Popa, Mihail-Constantin Eremia, Simona Cristea – „Teoria generală a dreptului”, All Beck Publishing House, Bucureşti, 2005, pag. 289.

both in Romanian legal landscape, and especially in foreign one, but considers the analysis of „The legal regime of the liability of the public servant in the European Union", as evidenced by the jurisprudence of the European Union courts. The theme seemed to be of great interest, especially since, as a result of Romania's status of member state of the European Union, Romanian citizens and officials have been opened up new prospects, including that of working in European institutions. We note, for example, that in 2007 the competitions for posts in European Union institutions have signed up over 30,000 Romanian citizens.

In these circumstances, the public servant appointed to a permanent office within the European institutions, without losing the citizenship of the State of origin, shall be subject to the rules governing the European civil service, and not to the rules governing the civil service system of the Member State of residence; the statutory scheme creates a set of rights and obligations linking the EU official to the European Union, but ensuring at the same time, its independence from the Member States of origin, on one hand, and assuring the legal protection by requiring European institutions the general assistance for officials against any legal action aimed at threats, insults or slanders to which he or his family is targeted by virtue of the quality and of the position held.

The analysis of provisions of the Staff regulations of officials and other public servants of the European Union, the regulatory framework for the European public office, distinguishes the following types of liability applicable to European officials:

- an administrative-financial liability of officials towards the European Union, according to which the official may be taken to compensate, in whole or in part, any damage caused to the European Union by serious personal misconduct while on duty or in connection with the civil service [3];
- a criminal liability[4];
- a disciplinary liability[5].

We noted that the first two types of liability applicable to European civil servants are similar to the constitutional and legal regulation of administrative-financial liability, respectively criminal liability of Romanian public officials.

[3] Art. 22 of the Staff regulation.

[4] Sections 6 and 7 of Annex no. IX to the Staff regulation.

[5] Title VI of the Staff regulation and Annex no. IX to the Staff regulation.

Regarding the administrative-financial liability of the European public servants, we endorsed the views expressed by the doctrine[6] according to which, unlike the Romanian legislation, the EU uses the term „the officer can be taken to repair" the damage caused to the European Union, which leads inevitably to the conclusion that such liability arises as a faculty of the European institution to decide whether or not to go against the official, by way of recourse.

We have shown that art. 52 of the Constitution of Romania, republished, regulates the administrative-financial responsibility of the administration for damages inflicted, an issue which arises only in cases where there is material or moral harm inflicted by acts or activities of the public authorities. It follows that Romanian citizens are entitled to recover the damages caused by administrative acts of the public authorities, respectively through their silence or delay in their creation. The doctrine defined the administrative-financial liability as the form of liability, which consists of the duty of the state, or, where appropriate, of the administrative-territorial units, to repair the damage caused to individuals by an unlawful administrative act or by the unjustified refusal of the government to solve an application relating to a right or a legitimate interest[7]. The administrative-financial liability of the public servants occurs either directly or indirectly, if called upon to guarantee the public authority where he carries out his duties.

The criminal liability of Romanian public officials is engaged according to the criminal law[8], under art. 86 of Law no. 188/1999 on the Statute of civil servants, republished, with subsequent amendments, for offenses committed while on duty or in connection with the civil functions they perform.

We found that there are, however, three differences, which, in our opinion, are essential:

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[6] Verginia Vedinaș, Constanța Călinoiu – „Statutul funcționarului public european", Universul Juridic Publishing House, 2nd edition, Bucharest, 2007, pag. 174.

[7] A. Trăilescu – „Drept administrativ", 3rd edition, C.H. Beck Publishing House, Buchrest, 2008, p. 361-370.

[8] The offences relating to public duties are in art. 246 and the following, of Law no. 15/1968 – The criminal code of Romania, republished in the Official Gazette of Romania, Part I, no. 65 of April 16th, 1997, with subsequent amendments and, respectively, in art. 295 and the following, of Law no. 286/2009 on the Criminal Code, published in the Official Gazette of Romania, Part I, no. 510 of July 24th, 2009.

1. the Romanian legislation expressly refers to other forms of liability applicable to civil servants, such as civil liability or contraventions;

2. the European regulation is a general principle value, without providing expressly what is meant by „serious misconduct" or the specific conditions in engaging such liability;

3. since, currently, we can not speak about a European Criminal Code or a European Criminal Procedure Code, nor a European Public Prosecutor, and the common judicial area is in its infancy (the creation of Eurojust and the European Arrest Warrant legislation refer to facilitating the cooperation between national prosecuting authorities in any investigation involving several Member States), we consider that the regulation of the criminal liability of the European civil servant remains only a statements, as there is no specific way for an European criminal sanction.

With regard to disciplinary liability, we noted first that, unlike the Romanian legislation, which expressly states which deeds are considered to be disciplinary misconduct, the Staff Regulations of officials of the European Union does not contain a similar provision, but generally refers to „any breach of official duties required to comply with under this Statute, committed intentionally or through negligence ...."[9]. We found that the regulation is likely to create the possibility of exercising an abuse by the administration, who has discretion in assessing the facts that constitute disciplinary misconducts, and such a provision could be included in a future European civil code of conduct as reflected, for example, by Law no. 7/2004 on the Code of Conduct for civil servants[10].

To implement the provisions on the administrative-disciplinary liability in public institutions, both Romania and the EU institutions set up councils of discipline, investigating the facts brought before them, which constitute disciplinary misconducts and propose disciplinary sanctions applicable to public officials that committed such acts.

The 2004 European legislator wanted to ensure for the discipline board a more stable structure and a permanent character, and for officers who have membership of the

[9] Art. 86 of the Staff regulation.

[10] Republished in the Official Gazette of Romania, Part I, no. 525 of August 2nd, 2007.

disciplinary committee to have specific training[11]. Thus, the President, the members and the alternates are appointed for a period of three years, but, if necessary, the European institutions may designate them for a shorter period, of at least one year. However, as appreciated by Professors Georges Vandersanden and Laure Levi[12], the system presents only a relative guarantee regarding the independence and impartiality of the disciplinary board, since the nomination of the president depends exclusively on the appointing authority, and it may appoint the members and the alternates for periods of less than three years. In this respect, we can see that same remark applies, mutatis mutandis, for the members of the Disciplinary committee of public officials of the Romanian Chamber of Deputies, where the president is designated by the Standing Bureau of the Chamber, two members are appointed by the Secretary-General and two are appointed by the representative union of civil servants in the Chamber of Deputies, or, if it does not exist, by representatives of parliamentary civil servants[13].

A problem that I found it particularly interesting is the case of the European civil servant subject to disciplinary proceedings is to be criminally prosecuted for the same offense. In this case, the Statute provides that a final decision is taken only after the ruling on the criminal case.

The jurisprudence of the European Courts seems clear. Thus, in Pessoa and Costa against the Commission[14], they stated that the suspension of the disciplinary proceedings for the officer against whom began the criminal prosecution for the same offense lasts until a final decision is made in the criminal case; at the same time, a criminal prosecution by a national court does not preclude the appointing authority to open disciplinary proceedings against the officer, for the same offences.

We found that of the expression of the European judge results, without any doubt, that there is a distinction between criminal prosecution by a Member State of a European civil servant and criminal European prosecution. In this context, however, as I

[11] Art. 8 of the Decision of the Commission of February 28th, 2004.

[12] Georges Vandersanden şi Laure Lévi – „La reforme administrative de la Commission – Quelques considérations générales", Cahiers de droit européen, 2005, pag. 330.

[13] Decision of the Standing Bureau of the Chamber of Deputies no. 9 of 14 May 2007.

[14] Case T-166/02, Judgment of the Court of First Instance (Third Chamber) of 13 March 2003, Jose Pedro Pessoa e Costa v Commission of the European Communities, in European Court reports - staff cases 2003, pag. I-A-00089 and II-00471.

stated before, currently, we can not speak about a European Criminal Code or an European Criminal Procedure Code, nor a European Public Prosecutor; thus, taking into account that the judicial area is yet at an early stage (the creation of Eurojust and the European Arrest Warrant legislation relate to facilitating the cooperation between national prosecuting authorities in any investigation involving several Member States), we found that the rules of criminal liability of European civil servant remain in statements since there is no practical way for enforcing European criminal penalties.

It is true that the European Anti-Fraud Office was created by the European Commission to strengthen the means of preventing fraud in the institution. The Office was given the responsibility to conduct administrative fraud investigations by conferring a special independent status, and the mission of the European Anti-Fraud Office (OLAF) is to protect the financial interests of the European Union, to combat fraud, corruption and any other irregularities including irregularities in the European institutions. However, for the arguments above, I think that any crime of fraud for a European official could only be sanctioned at this level by dismissal, and the criminal sanction will be issued by a court of the Member State for crimes committed against EU interests.

The above conclusion is supported by parts of the European Court of Justice and of the Public Service Tribunal case law, presented throughout the thesis, which refers to national criminal jurisdictions of EU Member States and criminal proceedings conducted on their territory.

Another difference from the Romanian system of disciplinary control, in which the judge has the option to check all the material and legal facts of the case, is that the European court can not substitute the assessing of the European institution which has ordered a sanction, and the only incumbent task is to determine whether the penalty is clearly disproportionate to the facts.

We found, however, that given the fact that Romania became a EU Member State, it is required by future law, to promote an amendment to Law no. 188/1999 on the Statute of civil servants, republished, with subsequent amendments, with the express purpose of regulating public official liability for damage to EU interests, especially if the object of its activity concerns the management of EU funds.