

IDENTIFYING THE RIGHT OF A PERSON AGGRIEVED BY A PUBLIC AUTHORITY IN THE ROMANIAN CONSTITUTION AND IN COMPARATIVE LAW

Cătălin-Radu PAVEL*

Abstract

The purpose of the present study is to analyze the development and the evolution of the right of a person aggrieved by a public authority in the Romanian Constitutions and in comparative law. The objectives of the study were to analyze the Romanian Constitutions in order to identify the provisions regarding the fundamental right of a person aggrieved by a public authority and to analyze the provisions of this fundamental right in the constitutions of other states: the Constitution of the French Republic, the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland, the Fundamental Law for the Federal Republic of Germany, the Constitution of the Republic of Italy, and the Constitution of Spain. By granting the fundamental right of a person aggrieved by a public authority is ensuring a good administration of the state by giving the citizens a compliance with their legitimate rights.

The citizen may be aggrieved in his legitimate rights and interests by a public authority, by means of an administrative act or by failure of a public authority to solve his application within the lawful time limit. The Romanian organic law that stipulates and protect this right is the administrative litigation law number 554/2004. Also, the Romanian state is liable for any prejudice caused as a result of judicial errors.

Keywords: *the right of a person aggrieved by a public authority, Romanian Constitution, comparative law, citizens legitimate rights, granting a good administration by ensuring the guarantee rights.*

1. Introduction

The purpose of this study is to analyse and identify the development and the evolution of the right of a person aggrieved by a public authority in the Romanian Constitutions and in comparative law.

The study is structured as follows: several selective aspects have been analysed with regard to the right of a person aggrieved by a public authority in Romania and the evolution of the right of a person aggrieved by a public authority in the Romanian Constitutions, and the selection from comparative law included for analysis the Constitutions of the following states: the Constitution of the French Republic, the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland, the Fundamental Law for the Federal Republic of Germany, the Constitution of the Republic of Italy, and the Constitution of Spain.

The studied matter is important because granting the right of a person aggrieved by a public authority at constitutional level ensures the protection of the manifestations of the citizens' will in relation to public authorities and also to other rights, liberties and citizen interests, thus ensuring the good governance of the State to the benefit of its citizens.

The present paper intended to answer to the matter studied by analysing both the evolution, the development and the improvement of the fundamental

right of a person aggrieved by a public authority in time, beginning with the first Romanian Constitution and up to the present days, and the comparative law by identifying this right also in the Constitutions of other states.

As regards the relation between this paper and the already existent specialized literature, the analyses conducted so far have dealt less frequently with the topic approached here, which is the analysis of the fundamental right of a person aggrieved by a public authority in the Romanian Constitutions, from the Development Statute of the Paris Convention of 7/9 August 1858¹ and until the Draft Law on the review of the Constitution of Romania of 2014². Furthermore, the author of this study has analysed this fundamental right in comparative law, in the Constitutions of other states, providing an overview of its application over the years and at international level.

In the current context, the author of this study considered the aspects approached by this research as having been especially important in view of the societal predispositions for a continuous improvement of its forms of governance, the citizens' aspirations, both of individuals and legal entities, for the development of social sciences, of the relations between public institutions and citizens, ensuring the good governance of the constitutional state.

* PhD candidate, Lawyer in the Bucharest Bar (e- mail: radu.pavel@avocatpavel.ro)

¹ I. Muraru, M.L. Pucleanu, G. Iancu, C.L. Popescu, *Constituțiile Române Texte. Note. Prezentare Comparativă (The Romanian Constitutions. Texts. Notes. A Comparative Presentation)*, Regia Autonomă „Monitorul Oficial” Publishing House, Bucharest, 1993, p. 7-14.

² The Draft Law on the review of the Constitution of Romania of 2014 was published in Monitorul Oficial (Official Gazette) no. 100 of 10th of February 2014.

2. Selective aspects about the right of a person aggrieved by a public authority in Romania

The right of a person aggrieved by a public authority is regulated at constitutional level by Article 52 of the Constitution of Romania. This article grants the right of a citizen who was prejudiced by a Romanian public institution to obtain the recognition of the claimed right, the annulment of the unlawful deed which caused the prejudice and the reparation of the suffered damage.

With the adoption of the law reviewing the Constitution of Romania³ in 2003, the Article 48 of the 1991 Constitution⁴ was amended, and paragraphs 1 and 3 were modified. Paragraph (1) which in the 1991 Constitution read: “A person aggrieved with regard to a right by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right, the annulment of the deed and the reparation of damage.” was changed into “A person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage.” Paragraph (3) which in the 1991 Constitution was: “The State has patrimonial liability, under the law, for any prejudice caused by miscarriages of justice in criminal trials.” was changed to its current wording, which is: “The State has patrimonial liability for any prejudice caused by miscarriages of justice. The liability of the State is determined under the law and does not eliminate the liability of the magistrates who acted in bad faith or serious neglect.”

This fundamental citizen right was “traditionally considered as falling into the broad category of rights that are guarantees, together with the right of petition, with which, as a matter of fact, it is closely correlated”⁵.

Therefore, in the doctrine, the right of petition, granted by Article 51 of the Constitution of Romania, together with the right of a person aggrieved by a public authority, form the class of rights that are guarantees, which are as a matter of fact a guarantee for all fundamental rights and freedoms.

The right of a person aggrieved by a public authority was brought under regulation by the provisions of Article 52 of the Constitution of

Romania: “(1) A person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage. (2) The conditions and limitations related to the exercise of this right are provided for by an organic law. (3) The State has patrimonial liability for any prejudice caused by miscarriages of justice. The liability of the State is determined under the law and does not eliminate the liability of the magistrates who acted in bad faith or serious neglect.”

In our opinion, the rights that are guarantees have ensured the protection of the manifestations of the citizens’ will in relation to public authorities and also to other rights, liberties and citizen interests, thus ensuring the good governance of the State to the benefit of its citizens.

Article 52 of the fundamental law represents the constitutional legal ground for the assumption of responsibility by public authorities in relation with the citizens, and in relation with a person aggrieved with regard to a right or a legitimate interest, which consequently provides legal protection for the latter through the annulment of the deed and the reparation of damage.

All rights and guarantees which concern the person aggrieved with regard to a right or a legitimate interest have been governed in Romania by an organic law, namely the Law of Administrative Dispute 554/2004⁶.

One first author⁷, with regard to the right of a person aggrieved by a public authority, said that “the changes brought to paragraph (1) by the reviewing law pursued a correlation with the other constitutional provisions and first of all with Article 21 which brings under regulation the free access to justice, meaning that any person may appeal to justice for defending their rights, freedoms and legitimate interests, and no law may restrict the exercise of this right. In line with this constitutional provision, the text was completed, meaning that not only the person aggrieved with regard to a right acknowledged by law is entitled to an action before a court of administrative dispute, but also a person aggrieved with regard to a legitimate interest (direct and personal).”

A second author⁸ held that “for a definition of the concept of “fundamental rights”, the following have

³ Law 429/2003 on the review of the Constitution of Romania, effective as from 29th October 2003, published in Monitorul Oficial, Part I no. 758 of 29th October 2003.

⁴ The 1991 Constitution of Romania was published in “Monitorul Oficial” (Official Gazette) no. 233 of 21st of November 1991.

⁵ M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, Constituția României revizuită – comentarii și explicații (*The Romanian Constitution Reviewed – Comments and Explanations*), All Beck Publishing House, Bucharest, 2004, p. 120.

⁶ Law of Administrative Dispute 554/2004, effective as from 06th of January 2005, with its subsequent changes and additions, based on its publication in “Monitorul Oficial al României (Official Gazette of Romania), Part I, no. 1154 of 07.12.2004.

⁷ Coordinators I. Muraru, E.S. Tănăsescu, Constituția României, Comentariu pe articole (*Constitution of Romania. Articles Commented*), C.H. Beck Publishing House, Bucharest, 2008, p. 517.

⁸ N. Pavel, Drept constituțional și instituții politice, Teoria Generală (*Constitutional Law and Political Institutions. General Theory*), Publishing House Fundația România de Măine, 2004, p. 70.

been considered: (a) the fundamental rights are subjective rights of the citizens; b) these subjective rights are essential to citizens' life, freedom and dignity, and indispensable to the free development of human personality; c) the fundamental rights are established by the Constitution and granted by the Constitution and by law."

A third author⁹ stated with regard to the right of a person aggrieved by a public authority that "Article 52 of the Constitution of Romania is the constitutional ground for the liability of public authorities for grievances caused to individuals through the violation of their rights or freedoms or legitimate interests, which means that all other dispositions referring to rights and freedoms must be correlated with this constitutional text."

A fourth author¹⁰ concluded that the right of a person aggrieved by a public authority is "the constitutional ground for the liability of public authorities for grievances caused to citizens through the violation or disregard of their rights and freedoms."

The Universal Declaration of Human Rights of 10 December 1948¹¹ provided for the right of a person aggrieved by a public authority in Article 8: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

The Universal Declaration of Human Rights¹² is the source of the concept of fundamental human right. In the Preamble of the Declaration, the Member States of the United Nations Organisation assumed the responsibility of recognising the Declaration "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."¹³

In our opinion, the citizen who was aggrieved with regard with a right has no legal obligation to prove the guilt of the civil servant; they only have to prove the prejudice brought to their right by an adverse administrative act. Consequently, the citizen has the responsibility to prove the causality link between the

adverse administrative act and the actual prejudice which was caused.

3. The evolution of the right of a person aggrieved by a public authority in the Romanian Constitutions

With regard to the evolution and development of the right of a person aggrieved by a public authority in the Romanian Constitutions, this study has analysed the Development Statute of the Paris Convention, the Constitution of Romania of 28 February 1938, the Constitution of 24 September 1952, the Romanian Constitution adopted on 29 June 1866, the Constitution of 29 March 1923, the Constitution of 13 April 1948, the Constitution of 21 August 1965, the Constitution of Romania of 8 December 1991, the Constitution of Romania reviewed in 2003, as well as the 2014 Draft Law on the review of the Constitution of Romania.

Therefore, the Development Statute of the Paris Convention, a statute which stood as a constitution, was the first Romanian Constitution. The Statute was adopted by the Prince of the Romanian United Principalities, Alexandru Ioan I, in May 1864.

No provisions referring to the right of a person aggrieved by a public authority have been identified in the Statute. Similarly, no provisions related to the right of a person aggrieved by a public authority have been identified in the Constitution of Romania of 28 February 1938¹⁴, and neither in the Constitution of 24 September 1952¹⁵.

As regards the Romanian Constitution adopted on 29 June 1866¹⁶, it brought under regulation the fundamental citizen rights. Therefore, Article 29 has been identified, which provided that: "No prior authorisation is necessary for the aggrieved parties to take action against public servants for the acts of their administration; however, the special rules established with regard to ministers shall remain unchanged. The cases and the type of actions to be taken shall be regulated by a specific law. Special dispositions in the Criminal Code shall determine the penalties of the denounced¹⁷."

These were among the first fundamental dispositions identified by this study with reference to the action taken by aggrieved parties against public servants for acts of their administration.

⁹ G. Iancu, Drept constituțional și instituții politice, Ediția 3 (*Constitutional Law and Political Institutions, 3rd edition*), C.H. Beck Publishing House, Bucharest, 2014, p. 294-295.

¹⁰ I. Muraru, E.S. Tănăsescu, Drept constituțional și instituții politice, Ediția 15, Volumul I (*Constitutional Law and Political Institutions, 15th edition, Volume I*), C.H. Beck Publishing House, Bucharest, 2016.

¹¹ The Universal Declaration of Human Rights was adopted and proclaimed by the United Nations General Assembly on 10th of December 1948.

¹² Ibidem.

¹³ The Preamble of the Universal Declaration of Human Rights adopted and proclaimed by the United Nations General Assembly on 10th of December 1948.

¹⁴ Ibidem, p. 97-117.

¹⁵ Ibidem, p. 141-159.

¹⁶ I. Muraru, M.L. Pucaneanu, G. Iancu, C.L. Popescu, Constituțiile Române Texte. Note. Prezentare Comparativă (*The Romanian Constitutions. Texts. Notes. A Comparative Presentation*), Regia Autonomă „Monitorul Oficial” Publishing House, Bucharest, 1993, p. 33-66.

¹⁷ Ibidem, p. 40.

The Constitution of 29 March 1923¹⁸ consecrated equal rights and freedoms for all. The following provisions of Article 31 have been identified in the content of this fundamental law: *“No prior authorisation is necessary for the aggrieved parties to take action against public servants for the acts of their administration, while the special rules established with regard to ministers shall remain unchanged. The cases and the type of actions to be taken shall be regulated by a specific law.”*¹⁹ The formulation of these fundamental provisions remained that of the 1866 Romanian Constitution.

With regard to the Constitution of 13 April 1948²⁰, Article 34 has been identified with the following provisions: *“Every citizen has a right of petition, as well as the right to request the bodies stipulated by law to arraign any public servant for the offences committed during their service”*²¹.

As concerns these fundamental provisions, we found that with the promulgation of the 1948 Constitution the right of petition was brought under regulation too and a right was granted to request the bodies provided by law to arraign any public servant for offences committed in the course of their service.

The Constitution of 21 August 1965²², which was adopted by the Great National Assembly at its meeting on 21 August 1965 and published in *“Buletinul Oficial al R.S.R.”* no. 1 of 21 August 1965, stipulated in Article 35 that: *“The individual aggrieved with regard to a right by an unlawful act of a body of the State may request to the competent bodies, under the law, the annulment of the act and the reparation of the damage”*²³.

With regard to the analysis of the Romanian Constitution of 8 December 1991²⁴, it came into force on 8 December 1991, when it was approved by the national referendum organised to this end and was published in *“Monitorul Oficial al României”* no. 223 of 21 November 1991.

The following provisions of Article 48 have been analysed: *“The right of a person aggrieved by a public authority (1) A person aggrieved with regard to a right by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right, the annulment of the deed and the reparation of damage. (2) The conditions and limitations related to the exercise of this right are provided for by an organic law. (3) The State has patrimonial liability, according to the law, for any*

prejudice caused by miscarriage of justice in criminal trials.”

The conclusion was that the 1991 Constitution stipulated that the State was liable for miscarriages of justice, limiting them to those committed in criminal trials. At the same time, the first ever, this right is named the right of a person aggrieved by a public authority and the Constitution requires that its limits and conditions are provided for by an organic law.

In the contemporary legal system, which is the Constitution of Romania reviewed in 2003²⁵, the right of a person aggrieved by a public authority, as a fundamental right in Romania, was provided for by Article 52 of the Constitution of Romania, republished in 2003: *„(1) A person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage. (2) The conditions and limitations related to the exercise of this right are provided for by an organic law. (3) The State has patrimonial liability for any prejudice caused by miscarriages of justice. The liability of the State is determined under the law and does not eliminate the liability of the magistrates who acted in bad faith or serious neglect.”*

As regards the 2014 Draft Law on the review of the Constitution of Romania, the analysis has identified the changes proposed in order to review the Article 52 of the Constitution in force. Therefore, in the reviewing proposal, Article 52 should be changed and complemented as follows: *“Paragraph (2) shall have the following content: « (2) The conditions and limitations related to the exercise of this right are provided for by law. » Paragraph (3) shall have the following content: « (3) The State has patrimonial liability, integral and non-discriminating, for any prejudice caused by miscarriages of justice or administrative errors. The liability of the State is determined under the law and does not eliminate the liability of the magistrates or the officials who are the authors of the miscarriages of justice or administrative errors. » After paragraph (3), a new paragraph is inserted, with the following content: « (3.1) The State has the obligation to initiate, immediately, an action for recourse against the authors of the miscarriages of justice or administrative errors that caused prejudices”*²⁶.

¹⁸ Ibidem, p. 71-92.

¹⁹ Ibidem, p. 77.

²⁰ Ibidem, p. 121-138.

²¹ Ibidem, p. 126.

²² Ibidem, p. 165-187.

²³ Ibidem, p. 171.

²⁴ The 1991 Constitution of Romania was published in *“Monitorul Oficial”* (Official Gazette) no. 233 of 21st of November 1991.

²⁵ Ibidem.

²⁶ Citizens' legislative initiatives according to Law 189/1999 Rationale of the draft law on the review of the Constitution of Romania – a citizen legislative initiative, 10 December 2013; published in *Monitorul Oficial* (Official Gazette), Part I, no. 100 of 10th of February 2014.

Following the analysis of the Romanian Constitutions, beginning with the Development Statute of the Paris Convention, a Statute which stood as the Constitution of Romania, and until the 2014 Draft Law on the review of the Constitution of Romania, we could see the evolution and the changes of the right of a person aggrieved by a public authority at fundamental level, the forms taken by this right over the years, the time when it acquired its name, which has been kept up to the contemporary period, as well as the changes proposed for the next review of the Constitution of Romania.

4. Selective aspects about the provisions related to the right of a person aggrieved by a public authority in the constitutions of other states

The following constitutions have been selected from comparative law for analysis: the Constitution of the French Republic, the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland, the Fundamental Law for the Federal Republic of Germany, the Constitution of the Republic of Italy, and the Constitution of Spain.

The provisions of the fundamental laws of the aforesaid states have been analysed in respect of the form consecrated by each state to the right of a person aggrieved by a public authority.

4.1. In the Constitution of the French Republic²⁷

Provisions have been identified with regard to the right of society to call to account any public agent in Article 15 of the Declaration of Human and Citizen Rights²⁸ of 26 August 1789: *“Society has the right to call to account any public agent of its administration.”*

The Preamble of the Constitution of the French Republic of 4 October 1958 shows that the French nation proclaims: *“solemnly its dedication to Human Rights and the principles of national sovereignty as set out in the 1789 Declaration confirmed by the Preamble of the 1946 Constitution”*²⁹.

No provisions have been identified with regard to the right of a person aggrieved by a public authority in the Constitution of the French Republic of 4 October 1958, this being provided for in the Declaration of Human and Citizen Rights, a declaration which is part

of the so-called French *“constitutional block”*, being an integral part of the Constitution.

An author³⁰ of the doctrine stated with regard to Article 15 that: *“this formulation, which today seems a little embarrassing and rough to us, underlay the “invention” of the jurisdictional function of the Council of State in France and allowed the creation of the rich case law of this prestigious court with regard to administrative liability (subjective and objective). Indeed, this is the source of the specific traits proper to administrative liability, which differentiate it from the liability under civil or criminal law. Based on the “exorbitant” legal regime (as Napoleon would call it later on) benefitting the public administration, it needs to exercise its competence within the limits which the law pre-set for it; however, as soon as it produces a prejudice, its liability is engaged based on the simple fact of proving the prejudice and the administrative deed which caused it, while the aggrieved individual has no longer the duty of proving the causality link between the administrative deed and the prejudice or the guilt of the administrative authority. A legal regime of liability is therefore consecrated for the public administration which is tougher than for individual subjects of the law, precisely in consideration of the authority attributes of which it benefits.”*

4.2. In the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland³¹

Although the United Kingdom of Great Britain and Northern Ireland has not a written constitution, given its tradition, the constitutional Acts have been taken into consideration.

The analysis of the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland has identified in the document called the *Bill of Rights” (1689)*³², point 1, the sub-point 13, the following provisions: *“And that for redress of all grievances and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently. And they do claim, demand and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgements, doings or proceedings, to the prejudice of the people in any of the said premises ought in any wise to be draw hereafter into consequence or example. To which demand of their rights they are particularly encouraged by the declaration of this highness the Prince of Orange as being the only means for obtaining a full redress and remedy therein. Having therefore an entire confidence,*

²⁷ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, *Codex Constituțional Constituțiile statelor membre ale Uniunii Europene, Volumul I (Constitutional Codex. The Constitutions of the Member States of the European Union. Volume I)*, Monitorul Oficial Publishing House, Bucharest, 2015, p. 637-667.

²⁸ Ibidem, p. 668-670.

²⁹ Ibidem, p. 637.

³⁰ E.S. Tănăsescu, *Prezentarea comparativă a abordărilor constituționale din alte state cu privire la răspunderea autorităților publice față de cetățeni și relativ la integrarea în Uniunea Europeană (A Comparative Presentation of Constitutional Approaches in other States with regard to the Liability of Public Authorities towards the Citizens and in relation to the integration into the European Union)*, *Revista de drept public (Public Law Magazine)* no. 2/2002, p. 16-23.

³¹ E.S. Tănăsescu, N. Pavel, *Actele constituționale ale Regatului Unit al Marii Britanii și Irlandei de Nord (The Constitutional Acts of the United Kingdom of Great Britain and Northern Ireland)*, Publishing House All Beck, Bucharest, 2003, p. 36-100.

³² Ibidem, p. 82-83.

That his said highness the Prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion rights and liberties.”

In the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland, in the 1998 Human Rights Act³³, provisions have been identified with reference to “8. *Judicial remedies* 1. *In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.* 2. *But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.* 3. *No award of damages is to be made unless, taking account of all the circumstances of the case, including: a. any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and b. the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.* 4. *In determining a. whether to award damages, or b. the amount of an award, the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.* 5. *A public authority against which damages are awarded is to be treated: a. in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made; b. for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.* 6. *In this section “court” includes a tribunal, “damages” means damages for an unlawful act of a public authority; and “unlawful” means unlawful under section 6(1).”*³⁴

4.3. In the Fundamental Law for the Federal Republic of Germany³⁵

The analysis of the Fundamental Law for the Federal Republic of Germany has identified the provisions of Article 34: “[Liability for breaching the

*duties associated with the service] If anyone, in the exercise of a public position that is entrusted to them breaches their duty in relation to a third party, then the liability lies, in principle, with the State or with the established body within which they serve. In case of premeditation or serious neglect, the possibility for an action for recourse remains open. For compensation claims and for recourse, the possibility of ordinary legal proceedings cannot be closed*³⁶.”

The conclusion is that there are provisions concerning the liability for breaching the duties associated with the service in the exercise of a public function in the Fundamental Law for the Federal Republic of Germany too.

4.4. In the Constitution of the Republic of Italy³⁷

The analysis of the Constitution of Italy has identified the provisions of Article 28: “*Officials and employees of the State and of public institutions are directly liable, under the criminal, civil and administrative laws, for their action violating the citizens’ rights. In such cases, civil liability falls on the State and the public institutions.*”³⁸

Other provisions have also been identified in the Constitution of Italy with regard to liability in case of miscarriages of justice, in Article 24 paragraph 4: “*The law defines the conditions and the forms of remedy in case of miscarriages of justice*”³⁹.”

4.5. In the Constitution of Spain⁴⁰

The analysis of the Constitution of Spain has identified the provisions of Article 106: “(1) *The tribunals control the regulatory power and the lawfulness of the administrative action, as well as its abidance by the purposes justifying it.* (2) *Individuals have the right, under the law, to receive compensation for any grievance in relation to their rights and goods, except for force majeure cases, any time these prejudices are the consequence of the operation of public services*”⁴¹.”

Also in the Constitution of Spain, the provisions of Article 121 have been identified: “*The damages caused by miscarriages of justice, as well as those that are the consequence of an abnormal administration of justice give a right to a compensation which is incumbent on the State, under the law.*”⁴²

³³ Ș. Deaconu, I. Muraru, E.S. Tanasescu, S. G. Barbu, Codex Constituțional - Constituțiile statelor membre ale Uniunii Europene, Volumul II (*Constitutional Codex. The Constitutions of the Member States of the European Union. Volume II*), Monitorul Oficial Publishing House, Bucharest, 2015, p. 232.

³⁴ *Ibidem*, p. 238-239.

³⁵ E. Focșeneanu, Legea Fundamentală pentru Republica Federală Germania (*The Fundamental Law for the Federal Republic of Germany*), All Educațional S.A. Publishing House, Bucharest, 1998, p. 29-140.

³⁶ *Ibidem*, p. 51.

³⁷ Ș. Deaconu, I. Muraru, E.S. Tănăsescu, S. G. Barbu, Codex Constituțional. Constituțiile statelor membre ale Uniunii Europene, Volumul I (*Constitutional Codex. The Constitutions of the Member States of the European Union. Volume I*), Monitorul Oficial Publishing House, Bucharest, 2015, p. 637-667.

³⁸ *Ibidem*, pp. 815.

³⁹ *Ibidem*, pp. 815.

⁴⁰ E. Focșeneanu, Constituția Spaniei (*Constitution of Spain*), C.H. Beck Publishing House, Bucharest, 2006, p. 13-97.

⁴¹ *Ibidem*, p. 57.

⁴² *Ibidem*, p. 63.

The regulations and the constitutional principles granting the right of a person aggrieved by a public authority in the Constitutions analysed in the study of comparative law have regulatory aspects which are similar to the Constitution of Romania.

5. Conclusions

5.1. Granting the right of a person aggrieved by a public authority at constitutional level ensures the protection of the manifestations of the citizens' will in relation to public authorities and also to other rights, liberties and citizen interests, thus ensuring the good governance of the State to the benefit of its citizens.

5.2. The right of a person aggrieved by a public authority is brought under regulation at constitutional level by Article 52 of the Constitution of Romania. The Article grants to the citizens who have been prejudiced by a Romanian public institution the right to obtain the recognition of the claimed right, the annulment of the unlawful act which caused the prejudice and the reparation for the suffered damage.

5.3. We could see that the interest at constitutional level has been ever since old times to protect the rights of a person aggrieved by a public authority at a fundamental level, so that, at social level, this right which is a guarantee has pursued to defend citizens' rights and interests.

5.4. A citizen who was prejudiced with regard to a right has no legal obligation to prove the guilt of the public servant; they only have to prove the prejudice

brought to their right by an adverse administrative act. Consequently, the citizen has the responsibility to prove the causality link between the adverse administrative act and the actual prejudice which was caused.

5.5. Beginning with the Development Statute of the Paris Convention, a Statute which stood as the Constitution of Romania, and until the 2014 Draft Law on the review of the Constitution of Romania, we could see the evolution and the changes of the right of a person aggrieved by a public authority at fundamental level, the forms taken by this right over the years, the time when it acquired its name, which has been kept up to the contemporary period, as well as the changes proposed for the next review of the Constitution.

5.6. The following constitutions have been selected from comparative law for analysis: the Constitution of the French Republic, the constitutional Acts of the United Kingdom of Great Britain and Northern Ireland, the Fundamental Law for the Federal Republic of Germany, the Constitution of the Republic of Italy, and the Constitution of Spain. The provisions of the fundamental laws of the aforesaid states have been examined in respect of the form consecrated by each state to the right of a person aggrieved by a public authority.

5.7. The topics for future research will include the right of petition, which together with the right of a person aggrieved by a public authority make the class of rights that are guarantees and ensure the good governance of the constitutional state to the benefit of its citizens.

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