COPYRIGHT IN THE CIVIL SERVICE: BETWEEN PROTECTING CREATIVITY AND THE PUBLIC INTEREST

Camelia-Elena GOLEANU[*]

Abstract

In an increasingly digital world, transparency and copyright are beginning to tread on the same ground. In the civil service, this raises a simple but difficult question: how much of what a civil servant creates should be protected and how much should be accessible to all? It's a fine balancing act between respecting a man's work and respecting the public's right to know.

Persons appointed to public office may, in the performance of their duties, participate in the preparation of publications, prepare and publish specialized articles and literary or scientific works and create various works such as reports, studies, presentations, software or other materials. They can create valuable original works. These works may be protected (irrespective of their value and purpose) by copyright, which gives authors certain exclusive rights, such as the right to reproduce, distribute or modify the work.

On the other hand, transparency and access to information are fundamental principles of a democratic society. Citizens have the right to be informed about the work of public authorities and to have access to documents and information which are of public interest.

In certain situations, copyright may conflict with the principles of transparency and access to information. For example, a work created by a civil servant might contain information of public interest, but copyright might restrict access to that information.

Also, sometimes the material or financial benefits resulting from the exploitation of copyright may conflict with the official duties of the persons appointed in public office, in which context we find ourselves in a conflict of interest.

In this context, a balance needs to be struck between copyright protection and the promotion of transparency, access to information and impartiality in the performance of the tasks of the service, so as to ensure both the protection of the interests of authors and the public interest in being informed and the public interest.

Keywords: *copyright, public office, intellectual creation, conflict of interest.*

1. Introduction

The definition of the civil service has been nuanced over time and has varied according to the historical evolution of the concept of the state and the institutionalization of political power through the state.

Thus, the „perfect state" imagined by Plato in his „Republic" is a philosophical utopia proposing an ideal society governed by reason and justice. Plato was deeply critical of the politics of his time, not least because the Athenian state was responsible for the execution of Socrates, who was Plato's teacher and mentor. The emphasis on philosophy as a method by which we bridge our misunderstandings with true knowledge, is integral to Plato's politics.

He argues that society should be governed by the learned, who should be selected only from the best and the brightest and subjected to the most demanding education possible, culminating in philosophy itself. In speaking of the „perfect state", Plato defines it as the state in which justice reigns, a virtue according to which each human type is in charge of what is ordained for him by the dominant function of the soul: those capable of practicing the virtue of reason (wisdom) make laws, those capable of practicing the virtue of the passionate side (courage) are in charge of defense, and those endowed with the possibility of practicing the virtue corresponding to the appetitive side of the soul (temperance) are responsible for securing resources.

There is thus a hierarchy of naturally determined social classes: the wise, the military, farmers and craftsmen. This government should be able to demand of its citizens as much as they wish in terms of changes

[*] PhD Candidate, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: camelia.goleanu2024@gmail.com).

that can be made to their lives. Plato's politics is highly authoritarian, yet aspects of it have proved to be great sources of inspiration for politicians and theorists of almost every possible political orientation.

In addition to his vast contribution in the fields of philosophy and politics, Plato exerted a tremendous influence on the foundations of the Abrahamic religions – Christianity, Judaism and Islam – despite the fact that he lived before the first or last of these existed and had no visible knowledge of Judaism.

According to Aristotle, man is a „political ***animal***"[1], a social being who cannot live outside the community. This is in spite of the fact that, according to Aristotle himself, there is no perfect political system in itself and no optimal rules for social coexistence. For Aristotle, the state is a political relationship between people who are equal in rights and free, because the beginning of the „primary formation" comes from the tendency of people to live in common, with the community being the ideal form of organization. Man is born a social and political being and has a natural tendency towards communication. The state emerges as a goal of nature, a product of social development, like the family and settlements, and the activity of the state is aimed at guaranteeing its own unity and defending the interests of its citizens.

Paul Negulescu referring to the notion of State said that it has „two different conceptions. In the first, the State has rights; the public functions are the exercise of the rights of the State: the State is omnipotent, therefore, it limits its rights, recognizing certain rights to citizens; in the second theory, the State has no other powers than those that the citizens have given it. Citizens seek to achieve their happiness through the organization called the State. The State is not a goal: we are not made for the State, the State is made by us and for us. Of these two doctrines, the first one takes into account the historical evolution of the State; it takes into account the reality, which shows us that a minority has always dominated and imposed its will on the masses, while the second one starts a contractual basis of the State; it is concerned mainly with what should be"[2].

Today, from the perspective of constitutional law, „the state is defined as a way of organizing power in the form of state power, with a view to carrying out the will of the holder of that power, *i.e.*, the people, whether the exercise of that power is carried out directly by the people or indirectly through its representative bodies"[3].

The state appears as an abstract legal construct that is often ignored or detested by the crowds, but which everyone invokes and calls upon when their life, liberty or wealth is threatened. The state, though an abstraction, creates hope for some, pain, discontent and even a sense of revolt for others. It is the target of rebellion and insurrection. People tear down states in order to replace them with states[4].

In line with the constitutional framework, art. 5 letter y) of the Administrative Code[5], defines the civil service as „the totality of activities carried out by persons appointed to public office, within public authorities and institutions, for the purpose of realizing the prerogatives of public power"[6].

The concept of public office has in its content special duties and responsibilities, in the sense that by exercising them it is ensured that the prerogatives of public power of public authorities and institutions are realized in the performance of their mission of organizing the execution and concrete execution of the law by issuing acts of authority.[7]

Without attempting to analyze in detail the public function in this essay, however, we note that within the prerogatives of public power we find activities such as: drafting draft legislation, the foundation and implementation of public policies and the acts necessary to implement laws, in order to achieve the competence of the public authority or institution, authorization, inspection, control and public audit, resource management, representation of the interests of the public institution, activities in the field of information society, etc.[8]

---

[1] „Zoon politikon", according to Aristotle, the word „politikon" coming from the Greek word „polis", meaning city. Classical political philosophy sees man in the Aristotelian sense, as a social-political animal. Aristotle is therefore the true author of the social contract theory!

[2] P. Negulescu, *Tratat de drept administrativ român*, vol. I, book I, 3rd ed. with numerous additions and modifications, „Tipografiile Române Unite" Publishing House, Bucharest, 1925, p. 7.

[3] I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 16th ed., vol. II, C.H. Beck Publishing, Bucharest, 2024, p. 46.

[4] I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, 9th ed., Lumina Lex Publishing House, Bucharest, 2001, p. 12-13.

[5] Art. 5 letter y) of the Administrative Code regulating general definitions stipulates: „In the meaning of this code, the following terms and expressions have the following meanings: (…) y) public function – the set of duties and responsibilities, established by law, for the purpose of exercising the prerogatives of public power by public authorities and institutions".

[6] M. Ursuța, I. Lazăr, *Drept administrativ*, Universul Juridic Publishing House, Bucharest, 2025, p. 141.

[7] V. Vedinaș (coord.), *Codul administrativ comentat. Explicații. Jurisprudență. Doctrină*, vol. I, Universul Juridic Publishing House, Bucharest, 2022, p. 39.

[8] Art. 370 of the GEO no. 57/2019 on the Administrative Code lays down the following with regard to the prerogatives of public power:

(1) The prerogatives of public authority shall be exercised through activities of a general character and through activities of a special character.

Taking into account the above-mentioned prerogatives of public power, we note the impotence of the public function in the proper functioning of state institutions and the need to establish clear rules regarding the persons who exercise public functions, rules that guarantee a balance between the effective exercise of public duties and, on the other hand, private rights and interests.

The domestic legislation regulates in art. 373 of the Administrative Code the principles underlying the exercise of public office, namely the principle of legality, the principle of competence, the principle of performance, the principle of efficiency and effectiveness, the principle of impartiality and objectivity, the principle of transparency, the principle of accountability, in accordance with the legal provisions, the principle of citizen orientation, the principle of stability in the exercise of public office, the principle of good faith, in the sense of respecting the rights and fulfilling the mutual obligations, the principle of hierarchical subordination. These principles are intended to ensure that public office is exercised in the public interest.

Also in art. 368 establishes the principles governing the professional conduct of civil servants and contract staff in public administration, namely, the supremacy of the Constitution and the law, the priority of the public interest in the exercise of the office held, ensuring equal treatment of citizens before public authorities and institutions, professionalism, impartiality and independence, moral integrity, freedom of thought and expression, honesty and fairness, openness and transparency, responsibility and accountability, principles designed to shape the conduct of persons in public office who protect the public interest in the exercise of their public authority.

In analyzing the above principles, we note that the civil service refers to activities carried out in the public interest. These activities are regulated by laws and other normative acts and are aimed at meeting the needs of citizens and ensuring the smooth functioning of society. Persons in public office are responsible for the fulfillment of tasks that contribute to the achievement of these objectives and are obliged to respect the principles of transparency, legality, impartiality and efficiency, free access to information of public interest, etc.

In addition, the job description of the public function, annexed to the administrative act of appointment to the public function, shall set out the specific duties of the post, taking into account the activities involving the exercise of the prerogatives of public authority, in accordance with the specific nature of the public function

(2) The activities of a general nature involving the exercise of the prerogatives of public power by the public authorities and public institutions referred to in art. 369 are the following:

a) elaboration of draft normative acts and other regulations specific to the public authority or institution, as well as ensuring their endorsement;

b) elaboration of proposals for public policies and strategies, programs, studies, analyses and statistics necessary for the substantiation and implementation of public policies, as well as the acts necessary for the execution of laws, in order to fulfill the competence of the public authority or institution;

c) public authorization, inspection, control and audit;

d) managing human resources and public funds;

e) to represent the interests of the public authority or public institution in its relations with natural or legal persons of public or private law, in the country and abroad, within the limits of the competences established by the head of the public authority or public institution, as well as to represent in court the public authority or public institution within which it operates;

f) carrying out activities in accordance with information society strategies, unless they concern the monitoring and maintenance of IT equipment.

(3) The activities of a special character involving the exercise of the prerogatives of public authority are the following:

a) specialized activities necessary for the exercise of Parliament's constitutional prerogatives;

b) specialized activities necessary for the realization of the constitutional prerogatives of the President of Romania;

c) activities related to the approval of draft normative acts in order to systematize, unify, coordinate all legislation and keep the official record of Romanian legislation;

d) specialized activities necessary for the realization of the state foreign policy;

e) specialized activities and providing the necessary support to protect the fundamental rights and freedoms of the individual, private and public property, prevention and detection of crimes, public order and public peace;

f) specialized activities necessary for the enforcement of the legal regime of the execution of sentences and measures deprivation of liberty pronounced by the courts;

g) customs activities;

h) other activities of a special nature relating to the exercise of public authority in areas of exclusive competence of the state, pursuant to and in execution of laws and other normative acts.

(4) The establishment of civil service posts shall be compulsory, insofar as the activities referred to in para. (1)-(3), with the exception of posts relating to staff in the categories referred to in art. 382 lit. c), h) and i), as well as posts within the autonomous authorities, for which the categories of staff are established by special legislation.

(5) Public offices shall be established by law.

corresponding to the post[9]. The job description may include provisions governing copyright and the prerogatives deriving therefrom in the exercise of the duties attaching to the public office.

2. Copyright

The legal institution of copyright is defined in doctrine as „the set of legal rules governing the social relations arising from the creation, publication and exploitation of works protected by copyright, namely: all works in the literary, scientific, artistic, musical, cinematographic, visual arts, architecture, maps, etc., these being listed for example in art. 7 and 8 of Law no. 8/1996 on copyright and related rights"[10].

At the center of the protection is the author, his work being seen as an extension of the author's personality, which is why, paradoxically, sometimes the work itself is protected to protect the author by rights unheard of and unimaginable in the common law of goods such as the recognition of a right to the integrity of the work which is a moral right of the author.

Law no. 8/1996 does not define copyright, stating only that it covers literary, artistic or scientific works as well as other works of intellectual creation and that this right is linked to the person of the author and involves moral and patrimonial attributes

In other words, we can say that copyright protects original intellectual works, such as literary, artistic, musical, scientific works. The holder of the (full) copyright is usually the author of the work. Copyright confers moral rights (the right of disclosure, the right to claim authorship, the right to a name, the right to respect the integrity or inviolability of the work, the right of retraction) and economic rights (the right to exploit the work). Derivative artists are not also the holders of moral rights, which are reserved exclusively to the sole and true author.

As for the concept of intellectual creation, it is defined in the doctrine as the result of the human intellect, *i.e.*, ideas, concepts, thoughts transposed in various forms in the material and spiritual life of society, representing various creations[11]. Intellectual creation refers to all literary, artistic and scientific works protected by copyright

The legal nature of copyright, although a disputed one, is emphasized in the dualistic theory as a complex one deriving from the content of copyright which includes two categories of rights, namely **moral rights and patrimonial rights.** The moral right of the author is to be recognized as the creator of the work and to resist alterations that might damage his reputation or his integrity. The author's economic right is the right that allows the author to derive financial benefits from the use of the work, such as the right of reproduction, distribution and public communication.

In the dualist system, moral rights and economic rights are considered to have a distinct existence and legal regime, the dominant aspect of copyright being moral rights. Once the work has been published, the author's economic rights lose their status of contingent rights and acquire actuality and certainty. However, moral rights do not cease to exist with the publication of the work; on the contrary, they accompany it, exercising their influence to a lesser extent[12].

Copyright is protected in Romania indirectly by the Constitution, through provisions guaranteeing the right to property and creative freedom. For example, **art. 44 of the Romanian Constitution** protects property rights, copyright is considered a form of intellectual property, and **creative freedom** is guaranteed by art. 33, which encourages culture, science and art, recognizing the importance of protecting created works.

However, effective copyright protection is detailed and regulated more specifically by laws, such as Law no. 8/1996 on copyright and related rights.

2.1. The interaction between the civil service and copyright

As described above, the public office entails a series of activities and prerogatives which give rise to correlative rights and obligations for the persons holding public office.

[9] Art. 385 footnotes of the Administrative Code „(2) In applying the provisions of para. (1), for occupied and vacant public positions, the standardized job description shall be drawn up and completed in accordance with the provisions of art. 31 of Annex no. 8 to GEO no. 57/2019, as amended and supplemented".

[10] V. Roș, *Dreptul proprietății intelectuale*, vol. I, C.H. Beck Publishing House, Bucharest, 2016, p. 157.

[11] A. Bogdan, *Regimul juridic al drepturilor conexe dreptului de autor reglementate prin Legea nr. 8/1996 privind dreptul de autor și drepturile conexe*, Pro Universitaria Publishing House, Bucharest, p. 19.

[12] V. Roș, *op. cit.*, p. 282.

Documents, projects, studies, reports or other original works involving a significant degree of creativity may be created in the course of public office and may be considered works of intellectual creation. For example, the elaboration of complex analytical studies, the creation of educational or informational materials, the development of original software or computer systems may be cases in which the public office holder may invoke copyright and the protection afforded by law to this right.

The link between copyright protection and the exercise of public functions can arise in a number of contexts, particularly in areas involving public communication, access to information and respect for intellectual property.

Thus, persons holding public office may use copyrighted works (*e.g.*, images, texts, videos) in their work. It is essential that these uses comply with copyright laws, including obtaining the necessary permissions or complying with the exceptions provided by law (such as use for educational or public information purposes). Public office holders have a responsibility to comply with copyright law to avoid infringements that may damage the financial or reputational interests of the institutions they represent.

On the other hand, public institutions have an obligation to communicate information of public interest. However, some information or material that is protected by copyright (*e.g.*, studies or reports produced by third parties) may require special agreements for publication

Finally, when public institutions digitize documents or works in order to make them accessible to the public, they must respect the rights of the authors of the material.

These issues underline the importance of striking the right balance between respecting authors' rights and fulfilling public obligations.

The correlation between copyright protection and free access to information is a complex subject, as both principles have valuable purposes, but can conflict in certain situations.

The issue that interests us and that we will address in this essay is the creation of works in the exercise of public office and the possibility of copyright protection.

As mentioned, copyright is a set of legal rights granted to creators of original intellectual works, such as literary, artistic, musical, software or scientific works. This right protects the creative expression of ideas, not the ideas themselves, and gives the author control over how his or her work is used, distributed, modified or commercialized.

In the civil service, because of its specific nature, copyright has specific features and limitations. The limitation of copyright in the public service can be justified by the public interest and the principles of transparency and access to information.

Documents and materials produced by persons in public office may be limited in copyright to enable citizens to access the public information needed to understand and evaluate the work of public institutions. When the materials created by have been publicly funded, there is an argument that they should be available to the general public without restriction because they are produced in the interests of society. In this context, copyright limitations can facilitate the use of materials for educational or research purposes, thereby supporting the development of knowledge and innovation.

According to Law no. 8/1996, certain official works (such as laws, decisions or administrative acts) cannot be protected by copyright, precisely in order to guarantee free access to this information of public interest. Moreover, most activities carried out in the civil service involve the application of laws, the drafting of administrative documents or repetitive operations which do not involve originality. These activities are therefore not considered to be intellectual creations because they are determined by clear rules and do not reflect the personality of the author.

Therefore, only those activities that involve creativity and originality can be considered intellectual works, but the exercise of copyright can be limited by the legal framework. Thus, an activity can only be considered a work of intellectual creation under certain conditions, depending on the nature of the work and the legal framework. According to Romanian law, for a work to be considered a work of intellectual creation and to benefit from copyright protection, it must be an original creation and an expression of the author's creativity.

According to the provisions of art. 45 of Law no. 8/1996, if the created work is realized as part of the service duties, on the basis of an individual work contract, the patrimonial rights over it generally belong to the author of the created work, in the absence of a specific contractual clause.[13]

But as we have presented, copyright also entails moral rights, such as the right to disclose the work (*i.e.*, to make it known to the public); the right of authorship (*i.e.*, the right to claim authorship of the work); the right to a name (*i.e.*, the right to decide under which name the work will be made known to the public); the right to inviolability/integrity of the work (*i.e.*, the right to respect for the work); and the right of retraction (*i.e.*, the right of the author to withdraw the work he has previously disclosed). These rights will always belong to the author of the work.

We note that copyright gives creators control over the use of their works, providing a reward for their creative efforts.

In this context, however, the dilemma may arise of the coexistence of the attributes of copyright which refer to the author and protect the author, with the specificity of the public function which refers to activities carried out for the benefit of the public interest.

The answer to these questions is not easy to answer because we are dealing with a copyright whose legal regime is not very clearly defined due to the complex nature of intellectual property law. Intellectual property law can thus be considered as a distinct branch of law which has links with several branches of law such as civil law, commercial law, administrative law and criminal law.

As far as the link with civil law is concerned, intellectual property law is often considered a sub-branch of civil law, as it regulates the relations between persons in relation to their intangible property. License agreements, assignments of rights and disputes concerning infringement of intellectual property rights are often governed by civil law.

With regard to commercial law, intellectual property plays a crucial role in commercial activity, and commercial law regulates issues such as trademarks, patents and trade secrets. Commercial law intersects with intellectual property law in commercial transactions involving intellectual property assets.

Administrative law is applicable in relation to governmental organizations such as the State Office for Inventions and Trademarks that are responsible for granting and registering intellectual property rights. Administrative law regulates the procedures and rules of these organizations.

In certain cases, infringement of intellectual property rights can constitute a criminal offense, and criminal law regulates the penalties for such offenses. For example, piracy and counterfeiting can attract criminal sanctions, where criminal law rules apply.

In conclusion, intellectual property law intersects with several other branches of law, depending on the context.

As a result, when analyzing copyright in the framework of public office, we find ourselves in the complex situation of delimiting how far the protection of the author's private interest related to this right goes and from where the protection of the public interest related to the framework in which this right is exercised starts.

In many legal systems, there are exceptions allowing the use of protected works without the author's consent for purposes such as education, research or journalism. These exceptions support free access to information while respecting the basic rights of authors.

In Romania, the protection of a civil servant's copyright is not explicitly and sufficiently regulated. It should involve several steps and clear measures such as **identifying the copyright holder, including clauses in the job description, protection of published works, registration of works, supervision of unauthorized use.** These measures can help strengthen and maintain copyright while protecting the integrity and recognition of the work

[13] Art. 45 of Law no. 8/1996 on copyright and related rights provides: „(1) In the absence of a contractual clause to the contrary, for works created in the performance of the duties specified in the individual employment contract, the economic rights belong to the author of the work created. In this case, the author may authorize the use of the work by third parties only with the employer's consent and subject to the employer's payment of compensation for the contribution to the costs of the creation. The use of the work by the employer, within the scope of the employer's activity, does not require the authorization of the employee author. / (2) If the clause mentioned at para. (1) exists, it shall include the term for which the author's economic rights have been assigned. If the term is not specified, it shall be three years from the date of the surrender of the work. / (3) (…), in the absence of a clause to the contrary, the employer shall be entitled to claim from the author a reasonable share of the income derived from the use of his work to compensate for the costs incurred by the employer in the creation of the work by the employee in the course of his employment. / (…) (5) The author of a work created under an individual contract of employment shall retain the exclusive right to use the work as part of the whole of his creation."

of civil servants. Limiting the copyright protection of civil servants can only be considered an infringement under certain conditions which depend largely on the national and international legislation in force.

In general, copyright is recognized for anyone who creates original works, including persons holding public office. However, for persons holding public office, exceptions may be made for works created in the course of their official duties, clearly specifying which attributes of copyright may belong to the institution, not to the author. Thus, even if the economic rights in a work are limited or transferred to the institution, the person holding public office has a moral right to be recognized as the author of the work, in accordance with international rules such as the Berne Convention. Any limitation on the rights of the public office holder must be justified and proportionate. If limitations are excessive or unjustified, they may be considered a violation of fundamental rights, such as the right to property, freedom of expression or a restriction on exercise of rights or freedoms.

In certain cases, lower copyright protection for persons holding public office may considered justified in order to ensure transparency, public access to information of public interest or the public interest. However, these exceptions must be clearly regulated.

A balance is essential between protecting the rights of people holding public office and fulfilling the obligations of public institutions or authorities towards society.

In the case of works created in the performance of official duties, as we have already pointed out, **Law no 8/1996 on copyright and related rights** provides for a division between moral rights and economic rights. Thus, **moral rights** always remain with the author and are inalienable, which means that they cannot be transferred to another person. As for the **economic rights** (rights of economic exploitation of the work such as reproduction, distribution or communication to the public), in the case of works created in the course of the performance of official duties, they should be transferred to the employer (public institution or public authority) by law. However, the transfer of these rights should be clarified in internal regulations or job descriptions. If there are ambiguities in the legal regulations, the author may retain certain economic rights, depending on the circumstances.

At the same time, if the job description does not include explicit provisions on copyright protection, this does not mean that the person holding a public office is exempt from compliance with copyright law. Copyright protection is regulated by national and European laws, and the copyright holder is obliged to comply with these provisions even if they are not directly mentioned in the job description.

In general, the absence of any mention of copyright in job descriptions or internal regulations may create ambiguities as to the responsibilities of the copyright holder, which may lead to conflicts or misunderstandings between employee and employer. To prevent such situations, it is recommended that the institution explicitly clarifies these issues through internal documents, guidelines, etc.

2.2. The limits of copyright. Conflict of interest

As we have shown, the author of a work may have both moral and economic rights in the work. We have also noted that the prerogatives deriving from authorship may be limited by law.

According to art. (1) of Law no. 8/1996, the person under whose name the work was first brought to public knowledge is presumed to be the author. In Romania, copyright is obtained automatically, by simply creating an original work. No formal registration is required to benefit from copyright protection.

According to art. 12 of Law no. 8/1996, „The author of a work has the exclusive economic right to decide whether, how and when his work will be used, including the right to consent to the use of the work by others". This right gives the author the possibility to obtain financial income or economic interest. We emphasize that a distinction must be made between authorship, which is a factual situation, and the subject matter of copyright, which is a question of law[14]. A person can be an author without being a subject of copyright and vice versa.

In this context, a special situation may arise in the case of intellectual creations realized in the exercise of public office. Thus, a person exercising a public office may find himself in the situation described by the provisions of art. 70 of Law no. 161/2003 on conflict of interest, namely, having a personal interest of a pecuniary nature, which could influence the objective fulfillment of his duties under the Constitution and other normative acts. As it follows from the legislation in force, a conflict of interest with regard to the copyright of a person

[14] V. Roș, *op. cit.*, p. 162.

holding a public office may arise in a situation where the resources of the institution are used for personal gain (such as creating a work on the basis of confidential information obtained through the public office), promoting a work by using the public status (such as promoting works through the official channels of the institution) or exploiting the position for financial gain (such as abuse or using influence to obtain contracts for the publication or promotion of the works created). However, in the hypothesis under consideration, we are precisely in the situation where a person, using his or her public position, creates a work from which he or she (can) obtain financial benefits.

Art. 71 of Law no. 161/2003 provides that „The principles underlying the prevention of conflict of interest in the exercise of public office and public functions are: impartiality, integrity, transparency of decision and the supremacy of public interest". Thus, we note that an important role in preventing conflicts of interest is played by aspects relating to the ethics of public office. In this context, we believe that the ethical standards laid down in the codes of ethics drawn up by public institutions should, depending on the specific nature of the activities of each public institution, lay down rules to be followed by public office holders in order to avoid conflicts of interest and to ensure transparency in external activities (such as the publication of a work protected by copyright). The job description should also clearly specify what types of works created in the course of employment are covered by copyright and who owns the copyright (the employer or the employee).

As it follows from the guide on conflicts of interest developed by the National Integrity Authority in 2020[15], in practice we can find three types of conflicts of interest, namely, potential conflict of interest, actual conflict of interest and consummated conflict of interest. Associated with each type of conflict of interest, we can identify phases of the exercise of the author's right over time, phases on which depend the seriousness and legal classification of the author's act.

A potential conflict of interest is a situation where the personal interests of the author could lead to an actual conflict of interest. Thus, in a situation of potential conflict of interest, the personal interest does not at the moment influence the impartial performance of the duties of the office and does not immediately affect the public interest, but it might at some point in time and in future circumstances affect the impartial exercise of the duties of the office. The situation of being in a potential conflict of interest does not in itself give rise to liability for misconduct and/or disciplinary action. This type of conflict of interest corresponds to the moment of preparation of the work, which, although prepared, is not yet used by the person exercising the public office.

A real conflict of interest arises when the person exercising a public office is called upon to deal with a request/application, to issue an administrative act, to conclude directly or through a third person a legal act, to take a decision or to participate in taking a decision in which he/she has personal interests or which concern persons close to him/her, natural and legal persons with whom he/she has relations of a financial nature and which influence or may influence the impartial and objective exercise of the mandate, public office or public dignity. This type of conflict of interest is when the author of the work uses the prerogatives of his public office to exploit the work, without this being regulated by the job description or the internal rules of the institution. Thus, a conflict arises between the personal interests of the person exercising the public office and the public interest, which is sanctioned by the legislation in force.

A consummated conflict of interest is when the person exercising public office has dealt with a request/application, issued an administrative act, concluded directly or through a third person a legal act, made a decision or participated in making a decision in which he/she has personal interests or which concerns persons close to him/her, natural and legal persons with whom he/she has relations of a patrimonial nature and which influence or may influence the impartial and objective exercise of the mandate, public office or public dignity. This type of conflict of interest corresponds to the moment when the author of the work obtains financial gain from the copyright, although this possibility is not provided for in the institution's internal rules or job description. This is the most serious situation in which drastic measures can be taken against the person exercising the public function, the author.

Finally, we can say that the lack of a clear regulation of the legal situation of copyright in the civil service can lead to situations of violation of both the private interest of the author and the public interest through the defective or impartial exercise of the duties of the office.

[15] CI Guide 2020 (3).pdf, developed by the National Integrity Authority of the Republic of Moldavia.

These situations underline the importance of clear regulations in this area and the need for early identification and proper management of employees' personal interests in order to maintain integrity and impartiality in public office.

3. Conclusions

Following this analysis, we can draw the following conclusions regarding copyright and the public function.

The author of a work is the natural person or persons who created it. Copyrights include both moral and economic attributes, allowing owners to control the use and exploitation of their work. Copyright protects original intellectual creations, including literary, artistic and scientific works. This protection is guaranteed by law and applies whether or not the work has been made available to the public. Copyrights can be assigned or exploited by contract, allowing owners to exploit their creations in a controlled way.

The civil service is governed by administrative law and is based on an objective legal relationship between the person exercising the public office and the public administration. The act of appointment is usually unilateral, being an administrative act and not a common law contract. The legal status of persons exercising public functions is established by law and includes specific rights and obligations, as well as procedures for appointment, discipline and accountability. Persons holding public office exercise duties established by law in the interest of the public authority, not for their personal benefit. These duties are set out in specific regulations that establish the applicable legal rules.

Copyright and the civil service are two distinct areas with different rules and principles. Copyright law focuses on the protection of intellectual creations, whereas the civil service is governed by administrative law and involves an objective legal relationship between the civil servant and the administration.

Although there are generally no direct conflicts between copyright and public office, there may be situations where public officials have to manage information or intellectual creations protected by copyright, which may involve certain legal considerations. Thus, public officials may have access to confidential information or intellectual creations protected by copyright. In this context, they have an obligation to respect confidentiality and copyright, and the unauthorized disclosure of such information is not permitted. Breaches of the legal provisions on the protection of confidential information or copyright may entail disciplinary liability for public officials. Public officials could also use copyrighted information in the course of their duties, which requires obtaining the necessary permission or respecting contractual terms. If a public office holder creates original works in within the scope of his or her office, copyright may be affected by the job description or internal rules of the institution.

In conclusion, although there are no direct conflicts between copyright and public office, persons holding public office must respect both copyright law and the legal and ethical obligations associated with their office, which can sometimes be contradictory, create dilemmas and give rise to legal liability.

4. *De lege ferenda*

In order to improve legal regulations, ensure transparency and to avoid abuse of copyright by public officials, some measures should be taken such as:

- *Clear definition of copyright in the context of public office.* The legislation should clearly specify which types of works created by persons holding public office in the course of their duties are covered by copyright and who owns the copyright (the institution or the official).
- Clear rules should be established for the use of copyright material for administrative, educational or public information purposes.
- *Each institution or public authority may have its own internal rules on the copyright of its officials.* These rules may set specific limits on the use, publication or commercialization of works created by officials during or outside working hours. Thus, in view of the main characteristics of the employment relationship and taking into account the complex legal nature of copyright, a model contract of collaboration could be envisaged at the level of each public institution or public authority, in which, taking into account the legislation in force, the parties (the public institution and the author) determine the rights and obligations arising from copyright. It is also compulsory for the job description (in the case of civil servants) to include provisions on copyright and intellectual creative activities. In the absence of such express provisions, the civil servant cannot carry out intellectual creative activities in his activity.

- It is essential that people in public office are aware of their rights and obligations in copyright matters.
- Institutions and public authorities should have clear copyright policies to avoid conflicts and to ensure compliance with the law. The person holding a public office, like any other author, has moral and economic rights in his works, with certain particularities. In the case of works created in the performance of official duties, the rights of the person holding public office are subject to specific limitations compared with works created outside the performance of official duties. This is justified by the fact that the work was created during working hours and with the resources of the institution. The author may be entitled to additional remuneration, if this is provided for in the job description or internal rules of the institution.
- *Public register of works created by public officials.* The creation of a public register of works created by persons holding public office would make it possible to identify rightholders and monitor the use of these works.
- *Institutions and public authorities should publish clear internal copyright policies*, including procedures for the use of protected material and the assignment of rights.
- Institutions and public authorities should implement internal control mechanisms to prevent unauthorized use of copyrighted material.
- The law should provide clear and proportionate sanctions for copyright infringement by public officials.

These measures not only clarify rights and responsibilities, but also protect the institution and employees from possible misunderstandings or disputes. By implementing these measures, it can create a clearer and more transparent framework for managing copyright in the public sector, reducing the risk of abuse and ensuring that authors' rights are respected.

References

- Berne Convention of 09.09.1886 for the Protection of Literary and Artistic Works, supplemented at Paris on 04.05.1896, revised at Berlin on 13.11.1908, supplemented at Berne on 20.03.1914, revised at Rome on 02.06.1928, revised at Brussels on 26.06.1948, revised at Stockholm on 14.07.1967 and at Paris on 24.07.1971 and amended on 28.09.1979, published in the Official Gazette of Romania no. 156/17.04.1998;
- Bogdan, A., *Regimul juridic al drepturilor conexe dreptului de autor reglementate prin Legea nr. 8/1996 privind dreptul de autor și drepturile conexe*, Pro Universitaria Publishing House, Bucharest, 2024;
- *Culegere-de-spete-relevante-pentru-administatia-publica-centrala-privind-conflictele-de-interese-incompatibilitatile-si-averea-nejustificata.pdf*;
- dec. no. 1272/2023 on the approval of the National Strategy Intellectual Property 2024-2028 and of the Action Plan in the field of intellectual property 2024-2028, as well as for the organization and functioning of the Interdepartmental Committee for the coordination of strategy and policies in the field of intellectual property, published in the Official Gazette of Romania no. 1160/21.12.2023;
- dec. no. 401/2006 on the organization, functioning, staff structure and equipment necessary for the Romanian Copyright Office to carry out its tasks, published in the Official Gazette of Romania no. 292/31.03.2006;
- digital platform *eORDA* – ORDA;
- Directive (EU) 2019/1024 of the European Parliament and of the Council of 20.06.2019 on open data and re-use of public sector information (recast), OJ L 172/26.06.2019;
- Directive 2001/29/EC of the European Parliament and of the Council of 22.05.2001 on the harmonization of certain aspects of copyright and related rights in the information society, OJ L 167/22.06.2001;
- Directive 2004/48/EC of the European Parliament and of the Council of 29.04.2004 on the enforcement of intellectual property rights, published in OJ L 157, 30/04/2004;
- GEO no. 57/2019, published in the Official Gazette of Romania no. 555 /05.07.2019;
- GO no. 66/2000 (republished) on the organization and practice of the profession of industrial property attorney, published in the Official Gazette of Romania no. 1019/21.12.2006;
- Law no. 161/2003 on some measures to ensure transparency in the exercise of public office, public functions and in the business environment, prevention and sanctioning of corruption, published in the Official Gazette of Romania no. 279/21.04.2003;
- Law no. 8/1996 on copyright and related rights, published in the Official Gazette of Romania no. 489/14.07.2018;
- Law no. 83/2014 on service inventions, published in the Official Gazette of Romania no. 471/26.06.2014;
- Muraru, I, Tănăsescu, E.S*., Drept constituțional și instituții politice*, 9th ed., Lumina Lex Publishing House, Bucharest, 2001;
- Muraru, I., Tănăsescu, E.S., *Drept constituțional și instituții politice*, 16th ed., vol. II, C.H. Beck Publishing House, Bucharest, 2024;

- Negulescu, P., *Tratat de drept administrativ român*, vol. I, book I, 3rd ed. with numerous additions and modifications, „Tipografiile Române Unite" Publishing House, Bucharest, 1925;
- *OECD-LEGAL-0316-en.pdf*;
- Poenaru, L.T., *Protecția dreptului de autor în dreptul penal*, C.H. Beck Publishing House, Bucharest, 2015;
- Romanian Constitution, revised;
- Roș, V., *Dreptul proprietății intelectuale*, vol. I, C.H. Beck Publishing House, Bucharest, 2016;
- Roș, V., Romițan, C.R., *Proprietatea Intelectuală, Legislație, jurisprudență și Repere Repere Bibliografice*, 5th ed., revised, Universul Juridic Publishing House, Bucharest, 2024;
- Roș, V., Romițan, C.R., *Proprietatea Intelectuală, Legislație, jurisprudență și Repere Repere Bibliografice*, 4th ed., revised, Universul Juridic Publishing House, Bucharest, 2021;
- Ursuța, M., Lazăr, I., *Drept administrativ*, Universul Juridic Publishing House, Bucharest, 2025;
- Vedinaș, V. (coord.), *Codul administrativ comentat. Explicații. Jurisprudență. Doctrină*, vol. I, Universul Juridic Publishing House, Bucharest, 2022;
- Vedinaș, V. (coord.), *Codul administrativ comentat. Explicații. Jurisprudență. Doctrină*, vol. II, Universul Juridic Publishing House, Bucharest, 2023;
- Vedinaș, V., Enache, M., *Funcționarul public în jurisprudența Curții Constituționale*, Universul Juridic Publishing House, Bucharest, 2023.