Legal Liability of Civil Servants of Local Public Authorities in the Republic of Moldova

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Abstract: In the working out of legal liability, there are a lot of published articles, collections and monographs nowadays which have got already some productive achievements. However, the notion of liability and its central problems have been controversial subjects for long years that create discussions and cause the necessity to elaborate some methodological questions. The legal liability is being determined as a duty "to be responsible", "to account". One of the results in the research is to determine that the legal liability has become the idea of "positive law responsibility", under which we understand not the liability of the person who has committed an infringement of the law but vice versa a lawful behavior of the person who commits no law infringements. The goal of the given article is to regard the legal liability of civil servants of local public authorities in the Republic of Moldova because an efficient activity of the state (a good state government) depends on the determination of concrete forms of the legal liability for the local public authorities.

Keywords: civil servant; corpus of the local public authorities; illegal act; punishment

The legal liability of civil servants from local authorities corpus, it is provided by Law. 158-XVI from 04.07.2008 on the civil service and civil servant status[2].

Thus, according to art. 56 of Law no. 158-XVI "for breaching of duty of service, of rules of conduct, of caused property damage, of offenses or crimes committed while being on duty or in connection with the exercise of function, the civil servant has got disciplinary, civil, administrative, criminal, as appropriate responsibility". In our view, forms of legal liability under this law have to be formulated properly. For instance, Law no. 158-XVI provides for disciplinary and administrative responsibility separately although in the literature in this field, these two forms are joined, for instance, disciplinary-administrative responsibility as well as patrimonial-administrative liability instead of liability. (Orlov & Belecciu, 2005, p. 138).

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[2] The Law on the civil service and the status of the civil servants, no. 158-XVI from 04.07.2008, M. O. no. 230-232 from 23.12.2008.

The term "liability" encompasses liability for the damage caused. This is an institution of administrative law, when damage caused by an administrative act and declared illegal by the administrative court, it is an administrative and patrimonial responsibility, specific for the administrative law.

It can be identified as an institution of civil law, when the damage was caused by an act outside duties, a civil offense. (Tofan, 2008, p. 361)

Thus, a natural or legal person is held for civil liability, but the civil servant from local government, according to the Constitution (Article 53) is held administratively and patrimonially liable.

Also, the above laws, do not expressly provide legal normative acts under which civil servants can be held liable. Law. 199, art. 24 provides only that "the provisions of this Law shall be completed with the labor legislation, common law rules in civil, administrative or criminal" and "as they do not contravene the laws that govern public dignity of the person".

We shall state that when the breach of the Constitution and Rules of authority civil servant shall be held liable for administrative and disciplinary responsibility, as required by law, for injury or legal rights of individuals through an administrative act, civil servants will be held administrative and patrimonial liable, under the Administrative Litigation Act No. 793-XIV of 10.02.2000. In the offense, the civil servant shall be held criminally liable, under the Criminal Code of the Republic of Moldova no. 985-XV from 18.04.2002. And if committing the offense, the civil servant under Art. 16 of 6 of the Offences no. 218-XVI from 24.10.2008, will be held civil penalty liable.

Disciplinary responsibility should come out from law and it should define also the "objective side ", for example actions and inactions and possibly the circumstances of time and space they need to produce in order to be to qualified as disciplinary offenses.

Thus, Law no. 158-XVI, in art. 57 determines disciplinary offenses:

a) late arrivals at work, b) absence without leave for more than 4 hours per working day; c) involvement in settlement of claims outside the legal framework; d) non-compliance on state secrecy or confidentiality information which the civil servant becomes aware in the exercise of e) unjustified refusal to perform the tasks and duties; f) repeated negligence or delay tasks systematically, g) actions affecting the image of the operating public authority h) breach of conduct for civil servants; i) unfolding political activities during the labor specified in Article 15 para. (4), j) violation on the obligations, incompatibilities, conflicts of interest and restrictions established by law; k) violation of organizing and running the contest, the rules of performance appraisal of civil servants, l) other disciplinary actions considered offences in the civil legislation and public servants.

Disciplinary sanctions applied for infringement of its rules of public authority are provided in art. 58: a) warning; b) reprimand c) severe reprimand; d) suspend the right to be promoted within a year; e) suspend the right to be advanced on the salary for a period of one to two years; g) dismissal from public office.

Further, Law no. 158-XVI in art. 59 describes the procedure of applying disciplinary sanction, thus "disciplinary sanctions are applied within 6 months from the date of the misbehavior, by the person / body who has the legal power of appointment ". It can be applied only after a preliminary investigation of the crime charged, fair hearing and explain to the civil servant in writing of the Disciplinary Board presented by the public official guilty, except those specified in article 58 a). The whole procedure must be made within one month of the date of discovery of the offense. The actual penalty will consider disciplinary cases and severity of the breach, the circumstances in which it was committed, the civil servant's behavior during the service and the availability of other disciplinary sanctions whose term has expired. After preliminary investigation, the Board proposes to the public authority the sanction for the guilty civil servant.

The internal administrative act on disciplinary sanction shall be communicated to the civil servant within 5 days from date of issuance with signature. The civil servant refusing to appear at the hearing to present arguments or to sign the declaration concerning disciplinary offenses which it is charged, and civil servant's refusal to sign the administrative act on disciplinary sanction shall be recorded in record of proceeding. If the civil servant's deed contains the components of a disciplinary offense and a crime, the investigation procedure by the Board shall be suspended until the disposition not to start the prosecution, removal or termination of a criminal investigation or prosecution until the court orders the payment or discontinue the proceedings. According to art. 60 of. 3 of the above mentioned law, the administrative act of disciplinary sanction can be appealed by the civil servant in the administrative court. The same article states that the action of the disciplinary sanction may not exceed one year from the date of application, except as provided by law. If during this period, public officials will not be subject to a new disciplinary action, it is considered that a disciplinary sanction was not applied.

Let us consider other forms of legal liability of the civil servant, namely the administrative and patrimonial responsibility, criminal responsibility and administrative, which are not expressly provided for by Law no. 158-XVI as disciplinary.

The public official from local authorities, as local elected official can be held patrimonial liable, under the Administrative Litigation Act No. 793-XIV[1]. Neither local elected officials nor civil servant of local authorities bear great responsibilities for the particular violation by an administrative act because:

1. The person doesn't appear to the court as a defendant, as a rule the representative authority – lawyer comes;

2. All the documents which led to the issuance of the contested administrative act are not presented, because based on the practice, judges do not apply to the extent provided in art. 22 of. 3 of Law No. 793-XIV of 10.02.2000: "The defendant shall submit to the court documents required in the first day of appearance, otherwise a judicial fine will be applied of up to 10 minimum salaries for each day of unjustified delay. The judicial fine doesn't exempt the defendant from the obligation to provide the requested documents" delayed consideration of cases, according to the civilian model because of absence of the defendant;

3. Damages come from the heritage of the public authority and not from the pocket of the civil servant guilty to issuing the administrative act, for example, the state. Indirectly, perhaps the state is guilty for the selected officials who bring harm, but still the blamed person (officer) is to respond personally (Orlov & Belecciu, 2005, p. 179);

4. Or, after canceling the illegal administrative act by the court, the civil servant who issued it, the place is not held legally responsible because the person whose rights have been violated by an administrative act only required the cancellation and Law no. 158-XVI from 04.07.2008, no Law No. 793-XIV of 10.02.2000 gives no provision for sanctions in this case.

Based on the above mentioned, we conclude that justice according to the principle of "a dog does not eat a dog " continues to protect over the interests of the respondent authority, and more effective public servant, than the rights and freedoms of victims in administrative disputes (Orlov, 2009, p. 102). We believe that in such cases, penalties must be made for the judge to not only cancel the decision issued by the civil servant illicit act but also to trigger them to legal liability.

There is still a blur in Article 3. 32 of Law No. 793-XIV of 10.02.2000 which states that "In case of failure within the decree, the head of public authority whose task is to execute it, can be prosecuted in accordance with the applicable law ". So, it is not clear according to what form of liability, penalty, and by whom.

Another art. 33 of this law states: "The head of public authority may submit to the court of common law proceedings for recourse against the civil servant responsible

[1] The Law on Administrative Court no 793-XIV from 10.02.2000, art. 25, M.O но. 57-58 from 18.05.2000.

for non-enforcement of administrative court", which allows civil servants to not execute judgments, as he still will be sanctioned at the end, and the most important, how long is to wait the person whose rights have been violated by an administrative act? We believe that the civil servant who is guilty of the law should face disciplinary sanction, immediately starting to rebuke when issuing an illicit act, and sanctions for failure to timely judgment, primarily because government representatives must comply with state law.

With regard to the liability of civil servants, there is a blur here also because Penal Code no. 985-XV of 18.04.2002, in a separate chapter XV (art. 324-335) called "Crimes committed by responsible officials", provides a number of offenses and penalties at the same time, based on Chapter title only officials in charge. In our opinion all civil servants according to their appointment bear the responsibility and need not be mentioned in the Criminal Code "responsible official" simple" offenses committed by public servants ", more that the basic law, namely Law no. 158-XVI from 04.07.2008 gives no definition of "person with official responsibilities ".

The public official is held responsible under Article 16 of 6 of the Offences no. 218-XVI from 24.10.2008, which states: "The person with official responsibilities (who in an enterprise, institution, organization, central or local public authority, be granted permanent or temporary, by law, appointment, election or under a commission, certain rights and obligations for the performance of public authority or administrative actions, organizational or economic) is held liable for committing a minor offense under this code if:

a) intentional use of the duties are contrary to work obligations; b) the overcoming of the rights and powers are obvious under the law, c) failure or improper performance of service obligations ".

Just like in the Criminal Code, the legislator states "the person with official responsibilities" explaining the concept, but it can be much more simple "civil servant".

And further, the Civil code causes different types of offenses, subject to the offense and the penalty for this topic.

From the above motioned, we can draw the following conclusion that the proper functioning of public administration depends on the quality of legal acts and legal facts as well as on quality of material and technical operations that it carries out. And once the law on local government and the law on civil and legal status of the public servant who is nominated by local elected, a number of categories of public officials with responsibilities, rights and obligations of their own, it is necessary to determine by legally forms of liability and laws that the local elected and civil servants must be held liable based on the specific cases of liability and the main penalties for committing illegal acts.

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*** The Law on Administrative Court no 793-XIV from 10.02.2000, art. 25, M.O но. 57-58 from 18.05.2000.