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MICU Victor

PARLIAMENTARY RESPONSIBILITY UNDER CONTEMPORARY RULE OF LAW

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Scientific leader:

COSTACHI Gheorghe, doctor habilitat in law, university professor

Composition of the Commission for public defense of the doctoral thesis:

1. *ARSENI Alexandru*, doctor habilitat in law, university professor - Chairman;
2. *GUCEAC Ion*, academician, doctor habilitat in law, university professor - official referent;
3. *BÎRGĂU Mihai*, doctor habilitat in law, university professor - official referent;
4. *ZAPOROJAN Veaceslav*, doctor of law, associate professor - official referent;
5. *COSTACHI Gheorghe*, doctor habilitat in law, university professor - member.

The defense of the thesis will take place on **March 19, 2021**, at 13:00, in the meeting of the *Commission for public defense of the doctoral thesis* at the Doctoral School of Legal, Political and Sociological Sciences in the National Consortium administered by the State University of Moldova, room 18, block A of the student campus, 3/2 Academiei Street, Chisinau municipality, Republic of Moldova.

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The abstract was sent on ___February 2021.

Scientific Secretary of the Public Defense Committee	*Silvia Goriuc*, doctor of law, associate professor
Scientific leader	*Gheorghe Costachi*, doctor habilitat in law, university professor
Author	*Victor Micu*

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CONCEPTUAL GUIDELINES OF RESEARCH

The topicality and importance of the investigated topic. With the assertion of the rule of law, accountability has become a fundamental principle for the activity of public power. Moreover, the essential feature of the rule of law has become the *mutual responsibility of the state and a person* [22, p. 157; 24, pp. 144].

The presence of responsibility in the relations between the state and a person determined the concept of responsibility in public law [49, p. 37], which developed in the form of state responsibility, responsibility of public authorities and responsibility of civil servants, individually (moments limited to the notion of *responsibility of the public power* or the *responsibility of the state*).

In general, the issue of *responsibility of the state* can be considered, from a certain point of view, an already consolidated and indisputable one, while from another point of view, it is quite relative, being in the process of shaping in recent years. decades [31, p. 40]. In the first case, we consider the responsibility of the state abroad (international, European), a subject widely conveyed by the doctrine of European and international law. However, another situation can be attested internally, where at a theoretical level, for a long time now, only the issue of responsibility of the person / citizen towards the state has been widely investigated, this being current for any historical period and political regime. [11, pp. 213-214]. Only recently, in the local literature, especially in the context of building the rule of law (which, as mentioned *above*, is supposed to be responsible from the start), more and more doctrinaires have begun to draw attention to the importance and the need to investigate the responsibility of the state, as this institution outlines a «fundamental principle for the activity of public power» within a rule of law [37, p. 9; 31, p. 41].

Given that it is a new idea for our society, obviously the responsibility of the state requires: a scientific basis in a theory, the development of an appropriate legal framework and, respectively, the development and application of an effective legal mechanism to ensure real responsibility / effective control of the state and its authorities.

Regarding the topicality and opportunity of studying this topic, they have been recognized by several local researchers, who come up with the following arguments in this regard [11, p. 214; 46, pp. 56]:

First of all, it is a necessity dictated by the historical period we are in, a period of profound reforms, the transition to a market economy, the democratization of the political, social and economic sphere of society's life, in which the amplification of the role and significance of state legal responsibility it is determined by the general purpose of building the rule of law.

Secondly, it is a requirement of time, because at the same time with the recognition of the general human values in the society we attest a pronounced increase of the number of crimes (offenses) admitted (committed) by the state, its organs and civil servants. Moreover, in recent years, such negative phenomena as nihilism and legal idealism, the serious violation of human rights and freedoms, the delay in solving various problems, the lack of prompt reaction to citizens' appeals and complaints, the substitution of legality for political opportunity, bribery and

corruption the state apparatus, the lack of responsibility of practically all state structures have registered catastrophic dimensions. The adoption or issuance of legislative and normative acts contrary to the Constitution are also quite frequent.

Respectively, a particularly important role in mitigating these negative phenomena can be attributed to the *institution of state* responsibility (in its broadest sense), which is likely to serve as a means of protection against the despotism of the rulers and guarantee the realization of human and citizen rights and freedoms., pp. 215; 58, pp. 44].

In parallel with the development of the theory of public power responsibility, the concrete doctrinal approach and the responsibility of the most important public authorities in the state, of which the Parliament is a part, is increasingly required. In other words, the development of the theory of the responsibility of the public power would be incomplete in the conditions in which it would not include such dimensions as the responsibility of the Parliament and its members.

In this context, it is important to note that the contemporary development of constitutional law has allowed, in the view of some researchers, the shaping of *parliamentary law* as a distinct branch of law (sub-branch of constitutional law [47, p. 44]). Respectively, in order to consolidate this status, it is considered necessary to substantiate the institution of *parliamentary accountability* as an independent form of branch responsibility [60, p. 94].

In the local literature so far little has been said about parliamentary law, and very little about the institution of *parliamentary accountability*. In our view, this fact emphasizes both the topicality of the subject and the opportunity to substantiate the theory of *parliamentary accountability*, especially taking into account the increasingly consistent efforts to consolidate democracy in the Republic of Moldova [29, p. 112; 37, pp. 61-62; 38, pp. 143].

The starting point for such a scientific approach is the very concept of *parliamentary accountability*, without the clarification of which it is practically impossible to further develop the theory. Interestingly, the very notion of *parliamentary accountability* can be found in the literature (especially Russian and Ukrainian) in different contexts with uneven semantics. Different authors use the phrase to explain and develop different aspects related to legal liability, without arguing the need or usefulness of using this expression, moments that further emphasize the need for in-depth study of the issue [36, p. 69].

Thus, the opportunity for the theoretical development of the issue in question is fully justified by the lack of fundamental studies on *parliamentary accountability* which, we must recognize, lately, tends to become an important guarantee of achieving the decisive role of Parliament in building the rule of law. Republic of Moldova. In other words, it is this legal institution (being well defined) that is called to consolidate the responsibility of the Parliament for the finality of the nominated process [33, p. 85; 38, pp. 183].

For the reasons stated, we reiterate that the topicality and importance of the topic proposed for research in this paper is mainly determined by:

- the need to clarify the essence of *parliamentary accountability* in the context of public accountability and its dimensions regarding the accountability of

Parliament and the liability of Members;

- the opportunity to launch ample theoretical debates at the level of the local scientific community, on this subject, because it is practically not attested as a subject of theoretical-scientific research;

- the need to be aware of the theoretical-legal problems of the responsibility of the Parliament and of the deputies and of the need to solve them, in order to optimize the legislation in the field.

The goal of the study. Starting from the mentioned, in this doctoral thesis we propose to study the forms of responsibility of the Parliament and the deputies in order to substantiate the theory of parliamentary responsibility, taking into account the theory of public power responsibility and the theory of representation, as well as the elucidation of theoretical-normative problems. field and the argumentation of appropriate solutions for the optimization of the relevant juridical-constitutional framework.

In order to achieve this goal, the following **research objectives** were outlined:

- evaluation and appreciation of the degree of theoretical research on the problem of liability

in the context of the responsibility of the public power and outlining the main directions of its research;

- the analysis of the theory of the responsibility of the public power in order to elucidate the forms of responsibility to which the state and its authorities are liable;

- analysis of the theory of representation in order to outline the constitutional status of the Parliament and the representative essence of the parliamentary mandate, a theory that represents a determinant of the essence of the parliamentary institution and of the measure / limit of parliamentary responsibility;

- identification and analysis of the forms of responsibility to which the Parliament as a whole is liable, as a collective subject of law;

- identifying and analyzing the forms of responsibility to which deputies are liable, including in terms of parliamentary immunity and inviolability.

Research hypothesis. *Parliamentary accountability* is an institution of parliamentary law, which involves the liability of Parliament and parliamentarians for violating various rules of law. It is an institution similar to the *ministerial responsibility*, becoming more and more current at present and necessary in the context of consolidating the responsibility and accountability of the state and its authorities in the conditions of building the rule of law. Starting from this hypothesis, in this paper we intend to outline the theory of *parliamentary responsibility*, by elucidating the forms of responsibility to which Parliament and parliamentarians are liable, starting from their status, the theory of representation and the legislation in force.

Methodological support. In order to achieve the purpose and objectives of research, a wide range of scientific research methods have been used. The main method of knowing reality was selected the *method of dialectics*, the application of which allowed the elucidation of the laws of interaction, interdependencies and the development of the studied phenomena. Along with this, the *logical method* and its *analysis* and *synthesis* procedures have been widely applied. The logical method

allowed the formulation of definitions of key notions, and the use of analysis and synthesis made possible the multilateral research of the essence of the institution of parliamentary accountability and its dimensions.

From the category of particular methods have been widely applied; *systemic method* - when studying normative acts and systemic interpretation of their provisions; *comparative method* - in the context of studying and analyzing the legislation and the experience of other states in the matter of responsibility of the Parliament and its members; historical method - to elucidate the origin and evolution of the responsibility of the state and its authorities, including Parliament and deputies; the *legal-formal method* - which allowed the elucidation of the structure of parliamentary responsibility and its elements in their interconnection.

The doctrinal support of the research mainly included a series of scientific papers signed by famous *local* authors (such as: Gh. Costachi, I. Guceac, T. Cârnaţ, Al. Arseni, D. Baltag, Gh. Avornic, I. Iacub, I. Iacub, Muruianu, I. Bantuş, V. Rusu, E. Morara, B. Negru, V. Popa, P. Railean etc), *Romanian* (such as: I. Deleanu, T. Drăganu, D.C. Dănişor, M. Constantinescu, I. Muram, C. Calinoiu, V. Duculescu, M. Enache, Gh. Iancu, C. Io-nescu, N. Popa, N. Prisca, CG Pupăzan, G. Vrabie, I. Vida, RD Popescu, M. Dogara etc), *Russian* (such as: C.A. Avakyan, M.P. Avdeenkova, V.A. Vinogradov, L.V. Zabrovskaya, N.M. Kolosova, A.A. Kondrashev, M.A. Krasnov, V.O. Luchin, A. V. Malko, T. V. Milusheva, A.V. Filatova, V. V. Romanova, V. N. Savin, V. V. Serebryannikov, O. A. Fomicheva, T.Ya. Khabrieva, A.V. Chepus, V.I. Chekharina etc.) *Ukrainian* (such as: P. Martinyuk, R.M. Pavlenko, V. M. Mishin, S. Soroka etc.) and *foreign* (such as: M. Prelot, J Boulouis, D. Rousseau, E. Picard, P. Pactet, Y. Meni, M. Sadoun, L. Jaume, F. Hamon, M. Troper, J. Gicquel, J.E. Gicquel, L. Favoreu, A. Esmein, P. Avril etc).

In parallel with the theoretical foundation, a large national (consisting of the Constitutions of several states, legislative and normative acts) and international (consisting of conventions, declarations, pacts and protocols of international and European character), an important jurisprudential support (consisting largely of the jurisprudence of the Constitutional Court of the Republic of Moldova), the opinions of the Venice Commission, reports and studies conducted by international institutions and various specialized public associations at the local level.

The scientific novelty of the obtained results. This paper represents the first complex, monographic scientific investigation in the local scientific area, dedicated to the study of the institution of parliamentary responsibility.

The scientific novelty of the study consists in the fact that a distinct vision is proposed on the concept / concept of *parliamentary responsibility* (which in the doctrine is approached in different meanings), as well as on the forms of responsibility to which the Parliament and its members are liable. In particular, it argues for the need to recognize parliamentary accountability as a distinct branch institution similar to ministerial responsibility.

On the basis of the conducted research:

- the foundations of the theory of parliamentary responsibility are laid starting from the two main premises: the theory of public power responsibility and the theory of representation;

- the independent existence of the constitutional responsibility of the Parliament and of the deputies is argued as the main form of responsibility of these subjects;
- the main legislative deficiencies are identified, which affect the institution of parliamentary responsibility on its two dimensions, and reasoned appropriate solutions for optimizing the legal-constitutional framework in the field.

Theoretical significance and applicative value. The results of the investigations are beneficial to the continuous development of the theory of constitutional law, parliamentary law, as well as public law as a whole. The thesis is a monographic source for researchers in the fields of public law, concerned with the issue of responsibility and legal liability of the state and its authorities. The results of the study can serve as indicative benchmarks in further research of the issue addressed.

The conclusions and recommendations regarding the substantiation of the theory of parliamentary responsibility and the optimization of important segments of the constitutional responsibility of the Parliament and the deputies will be able to be widely used both by theorists who will continue investigations in this field and by practitioners. the application of parliamentary accountability.

At the same time, the results of the thesis can be used in the teaching process, as theoretical and practical support in specialized courses. The thesis materials can be a support for the elaboration of further scientific papers (monographs, doctoral theses), textbooks, university courses. These materials can be useful for different levels of education (middle school, high school, university) in the study of constitutional law and parliamentary law.

Approval of results. The paper was elaborated within the Doctoral School of Legal, Political and Sociological Sciences, being examined both in the meeting of the guiding commission and in the meeting of the extended evaluation commission.

The main scientific results obtained have been published in specialized scientific journals and approved in important national and international scientific forums. Also, based on them, a collection of scientific studies and a voluminous monograph were published:

Thesis publications - 25 (12 articles in specialized scientific journals, 11 papers at national and international scientific forums, 1 collection of scientific studies and 1 monograph).

Volume and structure of the thesis: The thesis is structured according to the purpose of the research and the objectives set and includes: - *introduction* - which inserts an argument of the topicality of the research topic and its scientific innovation; - *five chapters* - in which the fundamental aspects related to the detailed disclosure of the purpose and objectives stated in the introduction are studied; - *general conclusions and recommendations* - which insert the generalizing ideas formulated as a result of the investigations carried out and the necessary proposals for the optimization of the identified problems; - *bibliography* - represents the documentary and doctrinal support of the thesis, being made up of 344 sources.

CONTENT OF THE THESIS

Chapter 1, entitled ***Analysis of the situation in the field of research on the issue of parliamentary accountability***, mainly includes a review of researchers who have been directly or tangentially concerned with the issue of parliamentary accountability or various aspects thereof.

In the first section (*1.1. The doctrinal interest in the theory of power accountability*), the main attention is directly focused on studies conducted in the field of concern. Starting from the conception of doctoral research - the substantiation of the theory of parliamentary responsibility based on the theory of public power responsibility and the theory of representation, the invoked studies are grouped according to the main aspects addressed, which are directly or tangentially related to parliamentary responsibility.

Obviously, the starting point for the research was primarily the works of law theory, signed by both Romanian and Moldovan researchers, as follows: PopaN., Boboş Gh., Dănişor D.C., Dogarul., Dănişor G.H., NiţoiuR., Şorop Al., Avornic Gh., Baltag D., Guţu A., Ceterchi L, Craiovan I. etc. Practically in all the works of these authors are presented quite succinctly the essence and value of responsibility and liability, including legal responsibility and legal liability.

A higher level of deepening of this subject can be attested in another series of works, signed by both local and Romanian authors, namely: Pătulea V., Şerban S., Mar-conescu G.I., FloreaM., Lorincz L., Străoanu M., Costin M., Barac L., Mihai Gh.C., Motica R. L, Bădescu M., Marinescu C.Gh., Bantuş A., Pîrău L, Negru B., Baltag D. etc. These researchers focus on various aspects of the problem, some on the essence and specificity of liability in general, others on legal liability in particular; some on the institution of social responsibility and its forms, others - directly on the issue of legal liability, detailing even the issue of legal sanction and its particularities.

Beyond these general studies, the works focused directly on the matter of liability in public law, on its central problem - the responsibility of the state, were imposed in attention. In the selection process, it was found that the responsibility of the state is approached by researchers both internationally and nationally. In the first case, they stood out with various interesting ideas: Anghel I.M., Anghel V.I., Anghel M., Sabău-Pop O.A.; Abdrashitov V.M., Shevchenko A.V., Marov I.V., Kembaev J.M.; A.L. Luchinin and so on. In general, it is found that the responsibility of the state at the international level is quite well developed in the literature, which cannot be said about addressing this issue at the international level, especially in domestic doctrine.

The foundations of *the theory of state responsibility* in our scientific area were laid by Professor Gh. Costachi, who in a series of voluminous papers presents this topic from different perspectives. Equally valuable are the works signed by the professor in co-authorship with: Cuşmir V., Hlipcă P., Iacub I. etc. A special contribution in this sense was also made by local authors, such as: Moraru E., Muruianu I. etc.

Compared to the local scientific area, Russian doctrine has stood out in particular, especially in that the approach to *public authority accountability* is much

broader, deeper and more diversified. Among the most remarkable authors in this regard are: Serebryannikov V.V., Milusheva T.V., Filatova A.V., Romanova V.V., Savin V.N., Malko A.V., Kushkhova B.Z., Vinogradov V.A., Krasnov M., etc. In most of the works signed by these authors, it is argued both the need for responsibility of power and the ways to achieve it.

Starting from the fact that the legal basis of state responsibility is expressly reflected in the Fundamental Law of the state, by enshrining *the principle of mutual responsibility of the state and the person*, in the research process, a special attention was paid to works dedicated to this principle. It is extensively researched in Russian doctrine by such authors as: Polyakov SB., Sivoplyas A.V., Babadzhanyan K.A., Vyrleeva-Balaeva O.S., Marov I.V., etc. Much less attention was paid to this principle in the local scientific area, the few thematic studies in this regard being signed by Iacub I. and Chiper N.

A distinct direction of the theory of public responsibility is related to the concrete forms of state responsibility. On the *patrimonial responsibility*, they were exposed under different aspects: Trailescu A, Cojocaru E., Iacub L, Carp S. etc. Distinct attention in the context was given to the theory of constitutional liability as an important form of legal liability of public power. The most extensive theory given is developed in Russian doctrine, unpublished studies in this regard signing: Lipinsky D.A., Kolosova H.M, Avakyan, Avdeenkova M.L., Bogoleiko A.M, Kondrashev A.A, Vinogradov V., Zabrovskaya L.V., Zinoviev A.V., Sergeev A.L. etc .

In the context of the doctoral study, the issue of constitutional liability is a very important one, as both Parliament and its members are liable for such a form of liability. Unfortunately, however, this subject received very little attention from local doctrinaires. Among the few who studied the subject are: Muruianu L, Costachi Gh., Hlipca A., Baltag D. etc.

Likewise, the issue of liability of various public authorities and civil servants / dignitaries is modestly investigated (especially in local doctrine). In this context, a special interest is presented by the works signed by: Konovalov P.P., Manevich I., Pupazan C.G., Mo-canu-Suciu A., Costachi Gh., Iacub I. etc.

In general, the works of these authors outlined quite clearly the theory of public accountability, a theory that served as a very useful and necessary landmark for doctoral research, as a first important premise for substantiating the theory of parliamentary accountability.

Beyond this, of course, in order to outline this theory, it was particularly necessary to refer to the *theory of representation*, which is directly related to the essence of the parliamentary institution, outlining its major role in the state and society. Important ideas about the representative essence of the parliamentary institution and, in general, about the theory of representation, were derived mainly from the textbooks of constitutional law signed by: Arseni Al., Ivanov VM, Suholitco L., Cârnaţ T., Dănişor DC, Deleanu L, Vrabie G., Drăganu T., Guceac L, Iancu Gh., Muram L, Tănăsescu ES, Gicquel J., Prelot M., Boulouis J., Pactet P. etc.

Likewise, important reflections in context are contained in the comments made to the constitutional text, signed by: Constantinescu M., Deleanu L, Iorgovan A.,

Muram L, Vasilescu FI., Vida L, Dănişor DC, Duculescu V., Călinoiu C, Duculescu G. etc.

A more detailed approach to the representative essence of the Parliament and the mandate of its members was attested in the works of the authors: Arseni Al., Ionescu C, Prisca N., Jaume L., Meni Y., Sadoun M. etc. The main elements of the constitutional statute of the Parliament and the parliamentarian are found developed in the textbooks of parliamentary law elaborated by: Călinoiu C, Duculescu V., Muram L, Constantinescu M., Amzulescu M., Popa V. etc. At the same time, complex studies focused on the status of deputies, the parliamentary mandate and its exercise were signed by: Criste M., Enache M., Arseni Al., Costachi Gh., Bantuş L, Varga A., Arnăut V. etc.

The studies carried out by these authors have allowed a broad substantiation of the theory of representation, focused on the status of Parliament and the parliamentary mandate, as an important and absolutely necessary premise for shaping the *theory of parliamentary accountability*, which is currently underdeveloped.

Among the few works, directly focused on the responsibility of the Parliament and the deputies were signed by: Popescu R.D. Parliament's responsibility in constitutional law. Bucharest, 2011; Zaporojan V., Stratan S. The incidence of a final and irrevocable conviction on the parliamentary mandate. In: National Law Review, 2015; Akopyan G., Akopyan R. *Parliament as a subject of constitutional and legal responsibility*, In. Constitutional Justice in the Republic of Moldova, 2006; Krasnov M.A. *Parliamentary responsibility of a deputy*. In: Constitutional system of Russia: issues of parliamentary law. Moscow, 1995; Markunin R.S. *Legal responsibility of deputies and representative authorities: general theoretical aspect*: Dissertation abstract. Saratov, 2013; Khachatryan A.S. *Constitutional and legal responsibility of parliamentarians of the Federal Assembly of the Russian Federation.* Abstract of the thesis. Moscow, 2011 etc.

In the end, it is concluded that the small number of such thematic works, not only denotes the lack of doctrinal interest in parliamentary accountability, but also justifies the absolute need to address this institution in the form of a broad scientific theory. Therefore, in the doctoral thesis it was proposed the theoretical substantiation of such a theory starting from two main premises: the theory of public power responsibility and the theory of representation.

The second section of the chapter is devoted to a distinct subject (*1.2. Parliamentary accountability as a subject of scientific research*). To begin with, it is mentioned that the contemporary development of constitutional law has allowed, in the view of some researchers, the shaping of *parliamentary law* as a distinct branch of law (sub-branch of constitutional law) [49, p. 44]. Respectively, in order to consolidate this status, it is considered necessary to substantiate the institution of *parliamentary responsibility* as an independent form of branch responsibility [62, p. 94].

In the local literature so far little has been said about parliamentary law, and very little about the institution of *parliamentary accountability*. This fact of course emphasizes both the topicality of the subject and the opportunity to substantiate the

theory of parliamentary accountability, especially taking into account the increasingly consistent efforts to consolidate democracy in the Republic of Moldova [29, p. 112; 37, pp. 61-62; 38, pp. 143].

The starting point for such a scientific approach is thus the very concept of *parliamentary accountability*, without the clarification of which it is practically impossible to further develop the theory. Interestingly, the very notion of *parliamentary accountability* can be encountered in the literature (especially Russian and Ukrainian) in different contexts with uneven semantics. Different authors use the phrase to explain and develop different aspects related to legal liability, without arguing the need or usefulness of using this expression, moments that further emphasize the need for in-depth study of the issue [36, p. 69].

For these reasons, the doctoral paper provides a comparative approach to the views expressed in contemporary legal doctrine in order to determine the content and meanings of the notion of *parliamentary accountability*, so as to create the necessary premises for further development of the theory in question.

As a result, taking into account those analyzed, it is argued that the phrase *parliamentary accountability* should be understood as an institution of parliamentary law, which involves the liability of Parliament and parliamentarians for violating various rules. It is an institution similar to the *ministerial accountability* that is becoming more and more current today and necessary in the context of consolidating the responsibility and accountability of the state and its authorities in the conditions of building the rule of law. Starting from this finding / hypothesis, in the doctoral thesis it is proposed to outline the theory of *parliamentary responsibility*, by elucidating the forms of responsibility to which the Parliament and the parliamentarians are liable, starting from their status and the legislation in force.

Chapter 2, with the generic name ***Theory of the responsibility of the public power - immanent premise of the theory of the parliamentary responsibility***, represents a debut chapter in which it was followed mainly the argumentation of the necessity to outline the theory of the parliamentary responsibility starting from the theory of the responsibility of the public power. Structurally, the chapter consists of two large sections (each subdivided into subsections) depending on the two important topics addressed: the responsibility of public power (*section* 2.1.) and the responsibility of public power (*section* 2.2.).

The main hypothesis from which the study starts is: "*The theory of public accountability is the foundation and basis of parliamentary accountability, which justifies its necessity and indispensability in the rule of law.*"

The first section is devoted to the issue of *public authority responsibility*, the study being focused on the following important aspects: *responsibility and accountability: concept, content and value* (*subsection 2.1.1.*) *and responsibility in public law* (*subsection 2.1.2.*).

In the context of approaching the concepts of *responsibility and liability* (*subsection 2.1.1.*), Both their meanings, attested in the doctrine, and the correlation between them are highlighted. As a result, it is found that one of the most common problems in the field is the frequent confusion of these notions, which are seen as synonymous.

The detailed approach of the value and content of *responsibility* and *liability* made it possible to ascertain that each of them has its own semantic load. An important distinction between *liability* and *responsibility* lies in the nature of the former to be exclusively retrospective, i.e. *liability* necessarily arises as a result of committing an act. Instead, *responsibility* is both retrospective and, especially prospective, which implies an attitude and intent on the facts to come. Thus, *liability* and *responsibility* are, in essence, two simultaneous and unitary phenomena. When they do not coincide, as meaning and as objectives, a conflict arises, the individual being forced to choose between the actions prescribed by norm and *liability* and those adopted by free choice and *responsibility*. At the same time, although distinct by nature and content, *liability* and *responsibility* are linked, both phenomena aiming at the relationship between the individual and the community, being forms of integration of the individual in society [11, p. 200].

It is important that even if the notion of *liability* does not have the same meaning as that of *responsibility*, they cannot be viewed separately because *liability* is linked to a sense of responsibility and, at the same time, is the expression of a measure of conduct required by law [4, pp. 154]. Thus, there is a connection between the two notions, in the sense that on the basis of *responsibility* the *liability* is constituted or, in other words, the *liability* intervenes when the responsibility ceases, that is on the "realm of the committed evil" [5, p. 153].

Finally, it is argued the need to avoid substituting the notions of *liability* and *responsibility* (respectively, *legal liability* and *legal responsibility*), because each category has its role in ordering and harmonizing relations within society. Taking into account the order in which these phenomena manifest / succeed, a first attention deserves *legal responsibility* (as a factor of prevention / avoidance of *legal liability*) [38, pp. 87-88], for the assurance and real development of which it is absolutely necessary the existence of a democratic system and a rule of law [11, p. 205; 10, p. 52], which should contribute effectively to the development of the individual's *responsibility*.

At the same time, starting from the fact that *responsibility* is closely related to the quality of the legal norm, to the properties of legal subjects, to the qualities of the parties of the various legal relations generated by the institution of *liability* [49, p. 22], it is concluded that *responsibility* (including legal) it must be inherent, in particular, to the legislator, who has the exclusive competence to outline the legal framework in the field, but also to the other state authorities involved in the relations of realization of *legal liability* (and not only) [41, p. 40; 38, pp. 88].

Following this idea, in the next subsection (*2.1.2. Responsibility in public law*), the issue of liability of civil servants / dignitaries is subject to study, in terms of its guarantee and assumption. Starting from the analysis of the legislation in the field, which enshrines *responsibility* as a principle of public administration, it is found that the main form of taking responsibility is *taking the oath* at the time of investing in office [11, p. 210]. At the same time, unlike the other categories of public dignitaries (and civil servants), it is found that deputies are not obliged to take the oath, which practically excludes the possibility of assuming responsibility in its capacity of principle, obligation and indispensable condition for the functioning of the

legislature. right [37, p. 108; 30, pp. 167]. Consequently, it is proposed the express constitutional consecration of the deputy's obligation to take the oath of allegiance at the time of investing in office.

The second section of the chapter is dedicated to the issue of *public power liability*, the study being focused on the following important topics: *the concept of liability in public law and the premises for its shaping* (*subsection 2.2.1.*); *the theory of state liability* (*subsection 2.2.2.*); *the constitutional principle of the mutual responsibility of the state and the person* (*subsection 2.2.3.*) *and the legal responsibility of the state: forms and grounds* (*subsection 2.2.4.*).

The study begins (in *subsection* 2.2.1.) with a historical retrospective on the emergence of the idea of responsibility in charge of power, and therefore of the state. Reviewing the most relevant ideas of the great thinkers who have exposed themselves over time on this issue, it is concluded that until the XIX century, the public power was considered, in principle, legally irresponsible, a concept based on the idea of the sovereignty of the state, which thus could not be responsible for the acts of its agents [39, p. 297]. With the assertion of the rule of law, accountability has become a fundamental principle for the activity of public power. Moreover, the essential feature of the rule of law has become the mutual responsibility of the state and the person [22, p. 157; 24, pp. 144].

The presence of responsibility in the relations between state and person determined the shaping of the concept of *liability in public law* [49, p. 37], which developed in the form of state responsibility, responsibility of public authorities and the responsibility of civil servants, individually. The close connection between them (especially between the first two) has led researchers to regard as synonymous such phrases as: "responsibility of public authorities", "responsibility of public power", "public responsibility", "responsibility of the state", etc. [49, p. 42].

At this point, it is opined that regarding the *responsibility of the state* as a complex institution, it is clear that the phrases in question must be seen as synonymous. On the other hand, when concrete cases of liability occur, there is a need to distinguish between concrete subjects liable (expressly provided by law), which inevitably implies some semantic differences between the expressions stated *above* [31, p. 43]. On the other hand, it is concluded that even if it operates with the expression "state responsibility", in reality the subject of liability is still the concrete public body / authority, which is thus to answer on behalf of the state. That is why, the most relevant phrase and integrative in the context is the *responsibility of the public power* [38, p. 108] This moment, however, does not exclude the need to outline the theory of state responsibility, as an absolutely necessary premise for substantiating the responsibility of its authorities.

In accordance with this need, the following subsection (2.2.2.) is directly devoted to the *theory of state liability*. To begin with, it is reiterated that the issue of *state liability* can be considered, from a certain point of view, an already consolidated and indisputable one, while from another point of view, it is quite relative, being in the process of contouring in recent decades [31, p. 40]. In the first case, we consider the responsibility of the state in external plan (international, European), subject widely conveyed by the doctrine of European and international

law. However, another situation can be attested internally, where at a theoretical level, for a long time now, only the issue of responsibility of the person / citizen towards the state has been widely investigated, this being current for any historical period and political regime. [11, pp. 213-214]. Only recently, in the local literature, especially in the context of building the rule of law (which from the beginning is supposed to be a responsible one), more and more doctrinaires have begun to draw attention to the importance and necessity of researching state responsibility. institution outlines a «fundamental principle for the activity of public power» within a rule of law [37, p. 9; 31, p. 41].

Therefore, given that it is a new idea for our society, it is argued that the *state liability* currently requires a scientific basis in a theory, the development of an appropriate legal framework and the development and application of an effective legal mechanism, which to ensure a real / effective state liability and its authorities. Only in such conditions could the institution of *state liability* serve as a means of protection against the despotism of the rulers and guarantee realization of the rights and freedoms of a person and a citizen [11, p. 215; 58, pp. 44].

After a brief presentation of the forms of responsibility circumscribed to the theory of state responsibility according to the doctrine (moral, political and legal responsibility), it is emphasized that *political responsibility* is more proper to the political elite, directly to the governing and institutionalized political forces. Even if it does not have an impact and an effect similar to legal liability, taking into account the liable subjects, this form of liability is a very important one in a society that wants to be democratic [37, p. 17]. Likewise, *moral responsibility* is appreciated as essential, especially within the elite / political class itself, which could serve as a filter for selecting candidates for senior positions, candidates worthy of the trust of the people and citizens [31, p. 43]. Respectively, it is concluded that the importance of this form of responsibility should not be neglected, as the moral rehabilitation of the policy and the system of public authorities can be one of the main and decisive conditions for the effective consolidation of the *legal responsibility of the power*.

Consequently, it is considered that the normative regulation and *de facto* existence of the responsibility of the state, of the subjects of public power, ensured by a concrete mechanism of realization, substantially depends on the fact how close it is to the ideal of the rule of law. the level of democratization of social and state processes, the degree of development of civil society institutions, which is an important lever that puts into action the mechanism of *legal liability of the state* [57, p. 9].

Finally, it is concluded [38, p. 118] that the need to study in depth the problem of state liability (both *stricto sensu* and *lato sensu*) is determined by the Basic Law itself, which stipulates the obligation to guarantee the *responsibility of the state towards the citizen and the citizen towards state*, the competence reverting in this respect to the Constitutional Court. These constitutional provisions make it possible to state that the constitutional foundation of the state's responsibility is the principle of mutual responsibility of the state and the person.

For the logical continuation of this idea, the following subsection (2.2.3.) is directly devoted to the *constitutional principle of mutual responsibility of the state*

and the person. From the very beginning, attention is drawn to the fact that even if the principle in question is enshrined in the Constitution (art. 134 par. (3) of the Constitution of the Republic of Moldova), neither the Supreme Law nor other organic laws concretize its essence and content. which denotes to some extent its declarative character, although the court responsible for its guarantee and realization is also identified [31, p. 43].

It is also found that at the doctrinal level, in our scientific area, the principle in question is very little studied, even if its normative value is invaluable for consolidating the rule of law. For this reason, in the following are briefly presented some ideas attested in the literature that explain to some extent the essence and content of this principle.

Beyond the content explanations given in the doctrine of the idea of mutual responsibility of the state and the person, attention is drawn to the fact that more and more researchers, addressing the issue in question, emphasize the forms of state responsibility (of its authorities and officials), which require regulation concrete legal framework and an effective implementation mechanism. Supporting such a position, as a generalization concludes on the need for the principle of *mutual responsibility of the state and the person* to be interpreted *lato sensu*, as implying not only the "responsibility" of these subjects (concept quite well developed in the literature), but also "responsibility" in all its recognized (and possible) forms [31, p. 43; 38, pp. 128]. Obviously, in this case most of the questions are raised by the situations in which the state (its authorities) are to be held liable.

Consequently, the last subsection (2.2.4.) is directly devoted to the *forms of legal liability of the state* and the grounds on which they arise. For the beginning, the emphasis is on the *patrimonial liability of the state*, expressly enshrined in the constitution, which intervenes in cases where illegal administrative acts or judicial errors are prejudiced to citizens (in the first case being the *administrative-patrimonial liability of the state*, and in the second - the *civil-patrimonial responsibility of the state*).

Despite the express constitutional regulation of these forms of state responsibility and their significance for the realization of the principle of state responsibility towards the citizen, however, it is found that in reality there are serious deficiencies in the application and implementation, which practically highlights the declarative character (for the most part) of the relevant legal regulations and, consequently, the irresponsibility of the state for the damages caused to the citizens by administrative acts and judicial errors [38, p. 134; 35, pp. 26]. In this context, the problem of non-regulation of the patrimonial responsibility of the state for the judicial errors admitted in the civil, contraventional, administrative contentious processes, etc. is considered quite serious. [23, p. 26], as well as the normative confusion regarding the exercise of the person's right to obtain compensation for damages caused by illegal administrative acts (attested in the specialized doctrine [21, p. 80]).

Beyond these moments, attention is drawn to another important aspect related to the lack of constitutional consecration of the obligation of the state to be patrimonially liable for prejudicing citizens by *legislative acts* (therefore, for

damages caused to citizens by acts of Parliament) [38, pp 134-135]. In this chapter, only the *Code of Constitutional Jurisdiction* establishes evasively, at art. 75 par. (2) [6] that: «Damages caused to natural and legal persons by the application of a normative act recognized as unconstitutional are repaired under the law». Given the fact that the cited norm is not developed, not regulating the procedure and its mechanism, it is concluded that at the moment it has a declarative character, which highlights the irresponsibility of the state for the damages caused by unconstitutional normative acts, in which case the state intervenes as a subject of liability for the legislative activity of the Parliament, the executive (in case of administrative-patrimonial liability for damages caused by illegal administrative acts) and as a subject of liability for the activity of the judiciary (in case of civil-patrimonial liability for damages caused by judicial errors).

Finally, the special importance of state responsibility in the contemporary period is reiterated, as it is likely to serve as a means of protection against the despotism of the rulers (a concrete platform on which to outline a true theory and practice of state responsibility) and to ensure the realization human rights and freedoms, in this context a distinct place and role belongs to the responsibility of the Parliament as the supreme representative authority of the state, which must represent an embodiment of the principle of mutual responsibility of the state and the citizen [38, p. 139; 35, pp. 30].

Chapter 3, entitled ***The Theory of Representation - a specific premise of the theory of parliamentary responsibility***, is devoted mainly to the study of three important topics: the theory of representation, the status of Parliament in the contemporary state and the parliamentary mandate. Structurally, the chapter consists of two sections, each with several subsections.

The first section (*3.1.*) Addresses cumulatively the problem of the theory of representation and the problem of the status of the Parliament within it. In the context of elucidating the theory of representation (*sub-section 3.1.1.*), attention is directly focused on the very origin of the idea of representation, the premises for its promotion, and the ways of materialization in the life of the state and society, through direct democracy and indirect.

Given the fact that a logical consequence of the idea of representation was the appearance of *representatives*, further emphasis is placed mainly on the issue of identifying them according to several criteria, as well as arguing the features that characterize them. In particular, it is emphasized that at present, representatives or representative bodies are not only the bodies acting on the basis of a popular investment, but also those which ensure the exercise of sovereignty. Among the specific features of the representative authorities are listed the following [47, pp. 22-23]: national character, elective character, perfect and permanent character.

Beyond this, it is emphasized that one of the fundamental principles of the state political organization of contemporary society is the *principle of representing* the sovereign will of the people [52, p. 26], which involves a delegation of power or political will from its rightful holder., to an individual and / or a group of persons, constituted in representative authorities, designated by pre-established procedures, repeated periodically, to which the citizens have access, in conditions of legal

equality, authorities that aim to express the political will of the electoral body [18, pp. 113].

In a reductionist interpretation, it is considered that, from an *institutional* point of view, the principle of representation is realized especially by the legislative power embodied in the institution of the Parliament [12, pp. 406-407]. Its representative character is expressed in the fact that it is seen as an *exponent of the interests and the will of the people (nation),* i.e. of all the citizens of the respective state [2, p. 179]. Hence the formula of *national* or *popular representation* with which the Parliament is named. In this sense, it is argued that the very appearance of the modem Parliament is linked to the emergence and evolution of legal relations of representation [52, p. 25], or, "it is in representation that Parliament finds its genesis" [47, p. 23; 48, pp. 328].

Following this idea, in the next subsection (3.1.2.) it is proposed to elucidate the constitutional status of the Parliament starting from the origins and evolution, concept and valences, ending with the argumentation of its particularities in its capacity as supreme *representative body in the state* and *sole legislative authority*.

From the perspective of its quality of *supreme representative body in the state*, it is specified that the Parliament is obliged to represent the interests of the subject that invested it, i.e. the people. Hence, it follows that he cannot act absolutely independently, without taking into account the will of the one who invested him, but also the other public authorities (since he does not represent power in its entirety, but only one of the powers state). Thus, within the representation report, the Parliament is obliged to act within and within the limits established by the constituent power. Moreover, Parliament must comply equally with its own laws, as must all other authorities, which is an expression of the application of the rule of law. At the same time, by virtue of the principle of separation of powers in the state, the Parliament must agree on the relations of collaboration and mutual control with the other powers of the state.

As the *sole legislative authority* in the state, the Parliament is today the largest national democratic forum and fulfills mainly the role of a law-making laboratory, a factor of responsibility for public life, a real counterweight to any attempt to diminish the rights human rights and the value of the institutions of the rule of law [49, p. 1].

Generalizing, it is reiterated that [12, pp. 406-407; 49, p. 12]: from a *political* point of view, Parliament, as a representative of national sovereignty, decides the fate of governments, approving government cabinets and programs, or on the contrary, their dismissal, controls the executive through various constitutional and regulatory means and means, and establishes the guidelines of domestic and foreign policy by creating primary legislation to regulate the most important social relations.

From a *legal and constitutional* point of view, the quality of the Parliament as the embodiment of national sovereignty achieves, in an institutional form, one of the most important functions of the state - the legislative function, constituting the legislative power of the state. This legal quality of the Parliament gives it a special status within the system of state authorities, which results from the formation (electoral process) of the legislature, special decision-making procedures and the

conduct of the entire activity, as well as the prerogatives conferred on members Parliament to guarantee the exercise of the mandate in optimal conditions.

Finally, it is concluded that all the important determinants of the constitutional status of the Parliament, have fueled in time the widespread idea that this public authority is not liable. In reality, however, the contemporary period shows the opposite, proving that national representation can also usurp power in the state (through a corrupt parliamentary majority). Therefore, the idea given (lack of responsibility) turns out to be already wrong, as the constitutional status of the Parliament implies not its lack of responsibility (because no one is above the law), but an increased responsibility, different forms of social responsibility, as well as special procedural features.

The last topic addressed in chapter 3 of the paper (*section 3.2.*) is the *parliamentary mandate*, analyzed from several perspectives: conceptual approach (*subsection 3.2.1.*); the mandate under public law versus the mandate under private law (*subsection 3.2.2.*); the typology of the parliamentary mandate (*subsection 3.2.3.*) and the features of the parliamentary mandate as public dignity (*subsection 3.2.4.*).

Initially (in *subsection 3.2.1.*) it is reiterated that the title on the basis of which the nation entrusts to its representatives the power to govern and decide on its behalf is called mandate [16, p. 238] (in our case - *parliamentary mandate*) . Regarding the constitutional regulation of the parliamentary mandate, it is found that the *Constitution of the Republic of Moldova* uses in its text such expressions as: *mandate of deputy* (art. 62), *mandate of Parliament* (art. 63, art. 64), *representative mandate, imperative mandate* (art. 68). So, the term *mandate* is used both in connection with the parliamentarian and in connection with the Parliament.

The important thing is that the mandate of the Parliament and the mandate of the deputy are involved in each other, they are achieved through each other. This results from the fact that, although it is exercised individually, as an expression of the general will, the mandate of the parliamentarians is fulfilled at the level of the assembly of which the parliamentarian belongs. Likewise, the Parliament, since the general will is realized at its level, it has a mandate resulting from the way of exercising and fulfilling the mandate of each parliamentarian [9, p. 664].

Beyond this particularity, it should be noted that although it is mentioned in several articles of the Constitution, the *parliamentary mandate* is not defined by it (nor by other relevant legislation in the field, such as *Parliament's Rules of Procedure* or the *Law on the status of Member of Parliament* no. 39/1994), as defined, for example, by the mandate in civil law. Respectively, it is concluded that the mission in this sense rightly belongs to the doctrine of constitutional law [1, p. 195], but also to the constitutional jurisprudence.

Finally, it is stated that the *parliamentary mandate* is also a power of attorney to represent. However, its specificity consists in the fact that it does not intervene in the sphere of civil (private) legal relations, but signifies a power of attorney with which its holder is invested by elections, whose content is predetermined by law [14, p. 230].

In order to clarify the specifics of the parliamentary mandate, in the following

subsection (3.2.2.) it is proposed to draw a parallel between the mandate of public law and that of private law.

As a result of a brief characterization of the mandate in private and public law, it is concluded that the distinctions between them are focused in particular on the following moments: *the parties of the representation relationship* (natural or legal person versus people), *the source of representation* (the contract between the parties, law, court decision - legal will, versus election - political will), *the content of representation* (rights and obligations established by the parties versus rights and obligations established by the Constitution and organic laws), *the manner of representation* (express and tacit versus exclusively express), *the possibility of substitution* (accepted substitution versus impossible substitution), *the impact of the generated obligations* (obligations assumed only by the representative versus obligations assumed by both the representative and the representative), *the manner of termination* (possibility of termination by resignation or death versus impossibility of revocation), *the nature of mandate* (imperative mandate versus representative mandate).

In the light of these particularities, it is specified that in order to explain the relationship between the nation and its elected representatives, initially, the theory of representation in private law was considered, reflected in public law in the institution of the *imperative mandate*, which was later replaced by the theory of *representative mandate*. [49, p. 62]. Taking into account these moments, in the following it is proposed to elucidate the essence and particularities of the two types of mandate, in order to finally argue the character of the current parliamentary mandate, regulated by the Fundamental Law.

Accordingly, the following subsection (3.2.3.) is devoted to the typology of the parliamentary mandate, with particular emphasis on the *theory of the imperative mandate* and the *theory of the representative mandate*.

From the perspective of the *theory of the imperative mandate*, it is mentioned that the elected, who must express the will of the voters, are obliged to submit to their imperative orders, thus transforming into presidents, i.e. officials subject to the orders of those in whose name they act. In other words, on the basis of the power of attorney, the parliamentarian acts only according to the obligatory instructions given by his voters, he cannot act either against or outside or without them [44, pp. 291-292]. If he ignores or exhausts the imperative instructions he has received, he must return to the electorate to demand new ones. Consequently, voters in the constituency may withdraw their powers without any motivation. Thus, the elected is revocable, the voters being able to dismiss him, through the revocation procedure, at the initiative of a certain number of citizens [49, p. 114].

In other words, under the *mandatory mandate*, the parliamentary mandate can be revoked. Revocation is inextricably linked to the mandatory mandate as it necessarily involves the fault of the representative in the exercise of his mandate [44, pp. 291-292], a fault that practically reflects the failure to comply with the instructions received from voters.

Based on these particularities, it is pointed out that the theory of the imperative mandate is illusory because, on the one hand, it can lead to serious abuses, in the

sense that parliamentary assemblies would be completely paralyzed if the elected had to return to the electorate every time. obtaining instructions for each problem, being impossible to predict their mode of action for each problem. On the other hand, this theory can lead to completely opposite results to those pursued: the elected in theory subject to the will of his constituency is, in reality, subordinated to the will of a political minority in the constituency that wants to dominate political life. In addition, the revocation of his mandate would be carried out at the request of the same political minority [15, pp. 106-108].

Given these disadvantages, the positive parts of the *representative mandate* are required, which consist in the fact that it has a general character - the parliamentarians representing the whole nation, not a group of voters, and representative - the parliamentarians are not obliged to fulfill any instruction from the part of the voters, having, from a legal point of view, absolute independence in relation to the voters. Consequently, the mandate granted can no longer be censored by the members of the nation, who, not having the right of final decision, must submit to the decisions taken by the nation as a will superior and distinct from the sum of individuals [49, p. 62]. Thus, from the moment of election, the parliamentarians benefit from a certain degree of autonomy, which is manifested both in relation to the voters and in the relations with the political parties or formations on the lists of which they ran.

Finally, it is concluded that in the context of the *representative mandate*, the relationship between the parliamentarian and the voter is morally, politically, but not legally guaranteed. Politically, the non-fulfillment of promises and commitments by the parliamentarian can lead to his exclusion from the party, and to the electorate, the responsibility materializes in the next elections, by not electing him for a new term [49, p. 120].

All these moments justify the major role of the representative mandate in maintaining and consolidating the representative democracy in the contemporary state.

The last topic addressed in this context (*subsection 3.2.4.*) Refers to the features of the parliamentary mandate as public dignity. Initially, it is specified that, from a legal point of view, the parliamentary mandate represents a *public function*, as it includes the powers given by the electorate, through the democratic act of elections, according to procedures that value the exercise of people's power through its representative bodies [9, p. 665]. Of course, it differs from a simple public function both by special features and by the ways of termination, being in its essence a *public dignity* [28, p. 43; 37, pp. 127].

Among the most important features of the parliamentary mandate, *irrevocability* is mentioned, which means the protection of the parliamentarian's independence in the exercise of his mandate. This feature does not mean that the parliamentarian cannot make commitments, that once elected he does not respect them, that, therefore, he does not respect the will of the voters and the discipline of the vote.

Irrevocability concerns legal liability. Thus, the parliamentarian cannot be held legally liable if he does not keep such commitments or promises [9, p. 665].

Finally, it is generalized that at the moment in the Republic of Moldova, the parliamentary mandate is a representative one, able to guarantee the freedom and independence of the deputy in his exercise. Based on this character, the parliamentary mandate is irrevocable, which means that the parliamentarian cannot be held accountable for the way he exercises it, a responsibility materialized in the lifting of the mandate. As an important guarantee of this fact, the Constitution expressly prohibits the imperative mandate (the antipode of the representative mandate), thus aligning the Republic of Moldova with European democratic standards.

Chapter 4, entitled ***Parliamentary Accountability as a Dimension of Parliamentary Accountability***, is directly devoted to the issue of Parliament's accountability and the forms of accountability to which it is liable. Structurally, the chapter consists of 5 sections, some of which are divided into subsections.

A first aspect addressed in this context is the issue of Parliament 's accountability (*4.1. Accountability of the Parliament in the contemporary state*), the attention being focused especially on its necessity in the conditions of the contemporary state and the typology of the forms of responsibility to which the Parliament is liable as the supreme representative body. The main doctrinal landmark underlying the research is the typology of the forms of Parliament's responsibility made by the researcher R.D. Popescu [49, pp. 39-41], which identifies a series of types of Parliament's responsibility according to different criteria.

Without neglecting the theoretical and practical importance of the given typology, it is argued that the main forms of responsibility of the Parliament in its capacity of supreme representative public authority in the state are [26, p. 194; 42, p. 19]: *political liability* (which is largely conventional) and *legal liability*. At the same time, it is emphasized that the detailed knowledge of these forms of responsibility is fundamental for the entire process of accountability of the supreme representative body of the state and its members. Despite this, it is acknowledged that little has been said in doctrine about these forms of liability. Moreover, in some places researchers confuse them without trying to clearly delimit each other, even if at first sight it is obvious that these are two distinct forms of liability. Accordingly, in order to achieve this goal, the following sections of the chapter are devoted to the *political liability* and *legal liability of Parliament.*

In the context of approaching the political responsibility of the Parliament (*4.2. Political responsibility of the Parliament: essence and particularities*), it is reiterated from the very beginning that in general, the *political responsibility* of the representatives is the basis of representative democracy, there is a close link between responsibility and representation [49, p. 39].

After a brief presentation of the essence of political responsibility, as "a responsibility of state bodies and dignitaries towards the people for the non-compliance of the activity carried out with the trust granted" [59, p. 64], it is stated that "the *political responsibility of the Parliament* is committed, for political reasons, before a political body, which is the electoral body" [49, p. 258]. It derives from deeds by which extrajudicial political rules are violated and leads to the support of extrajudicial sanctions such as [43, p. 186]: the hostility of the population

manifested through rallies, demonstrations, protests; the hostility of the press, the decrease of the credibility proved by the opinion polls (during the exercise of the mandate - e.n.) and the loss of the elections (after the expiration of the mandate - e.n.) etc.

Beyond this, it is pointed out that the doctrine considers that the sanction imposed politically by political authorities and for political reasons is a *political sanction*, manifested, in particular, by a political disagreement (vote of no confidence) leading to loss of power [49, p. 258]. Moreover, the real sanction for the Parliament's mode of action is the *electoral sanction*, which intervenes at the end of the mandate and which consists in not being elected for a new mandate [49, p. 261].

Generalizing on the issue of *Parliament's political responsibility* (argued in the doctrine), it is reiterated that this is a largely conventional responsibility, at least for a few important reasons: first, the so-called "political sanctions" applied during the exercise of the mandate. (blame by the electorate, hostility of the population manifested by rallies, demonstrations, protests, etc.), have virtually no direct impact on Parliament; it has a negative impact, however it is improper to the Parliament, as the supreme representative collegial body, as practically the consequence affects the socio-political formations that formed it, being impossible in the absence of this sanction to elect and invest the Parliament in the same composition.

Therefore, from the perspective of the main applied political sanction (non-election for a new mandate), the political responsibility of the Parliament, but also of the parliamentarians (in the given context), is illusory. This is explained by the fact that the parliamentarians are not elected individually, but on the lists proposed by the political parties (under the conditions of the proportional electoral system). Respectively, the effect of the given political sanction is directly reflected on the parties participating in the elections and not on the direct parliamentarians who, paradoxically, could obtain even more consecutive mandates despite the blame exposed by the people in the elections. Parliament during the exercise of its mandate [42, p. 22; 38, pp. 169]. Therefore, it is concluded that only if the pressure of the electorate (exerted through rallies, demonstrations, protests, etc.) succeeds in amending or annulling its decisions, can we speak of a real political responsibility. his.

Regarding the *political-moral responsibility of the Parliament*, it is emphasized that, strictly speaking, only the parliamentarians are liable for such a responsibility (they can be sanctioned with exclusion from the party), which can intervene both during the exercise of the mandate and at the end. It is important, as the Constitutional Court has stated [20, §43], that such an exclusion does not lead to the loss of the parliamentary mandate.

In conclusion, it is specified that, in the strict sense, only the deputy can be *politically liable*, the political sanction being applied either by the party that submitted him as a candidate (by exclusion from the party) or by the voters who -they elected directly (by revocation, in the case of the mandatory mandate).

The third section of the chapter is dedicated to the legal responsibility of the Parliament (*4.3. The legal responsibility of the Parliament: forms and particularities of realization*), being structured in three subsections according to the

main aspects approached.

To begin with, it is reiterated that starting from the role and importance of the Parliament within a rule of law, the people's representatives, once they receive the exercise of power, must exercise the powers delegated to them under the conditions and limits established by the constituent power. Exceeding these limits amounts to violating the constitutional and legal provisions and consequently attracts the *legal responsibility of the Parliament* [49, p. 3]. Furthermore, the *legal responsibility of the Parliament* is approached in two aspects: either as a *consequence of the imperative mandate,* or as a *consequence of the representative mandate*.

In the context of approaching the *legal liability of the Parliament in the case of the mandatory mandate* (subsection 4.3.1.), Attention is drawn to the fact that under such a mandate it is possible to individually revoke each parliamentarian, who does not comply with the instructions received from voters in the constituency in which he was elected. Respectively, the revocation of the Parliament as a whole is no longer justified, specific to the imperative mandate, being therefore the *individual revocation of its members* [49, p. 294].

In the light of international practice, as examples of measures of responsibility of the Parliament are invoked: the *American recall* and the *revocation of the mandate* as a result of the change of political affiliation, to which are added the cases of socialist constitutions and contemporary communist regimes. It is also specified that the institution of *revocation of the deputy mandate* was in the past proper to both the USSR and the Moldovan SSR, being expressly regulated in art. 102, art. 103 par. (3) and art. 107 of the USSR Constitution of 1977 and art. 91, art. 92 par. (3) and art. 96 of the 1978 Moldovan SSR Constitution.

Compared to the current situation in the Republic of Moldova, the proposal for a legislative initiative to introduce the institution in our legal system through the amendment and completion of the Constitution (legislative proposal currently registered at the Permanent Bureau of the Parliament of the Republic of Moldova) is brought to attention. As a result of the analysis of the opinion of the Venice Commission, of the position of the Constitutional Court and of the studies carried out by experts on this issue, the inopportune and useless nature of this proposal is argued for at least several reasons: firstly, the institution is contrary to European standards; secondly, by introducing it we would align ourselves with the contemporary totalitarian states that promote it; thirdly, in the conditions of the mixed electoral system, the revocation of the deputies would be technically impossible to implement; fourthly, the legal system of the Republic of Moldova has a similar institution - the *revocation of the mayor,* which was practically never applied, probably also for reasons of difficulty; fifthly, the removal of Members is an institution capable of diminishing the representative essence of democracy in our political and legal system; Finally, the removal of deputies is not an optimal solution for holding Parliament accountable as the supreme national representation, as it is only likely to generate chaos and endless elections of deputies in Parliament (especially given the legal and political culture of our society).

Generalizing on the issue, it can be deduced that under the conditions of the mandatory mandate, the responsibility concerns only the *parliamentarians,* who can

be revoked individually both by the electorate (by elections, for non-fulfillment of the commitments assumed) and by the party they belong to change of political affiliation and not only (for violation of party discipline, political principles and rules). In both cases the liability is a legal one, as the grounds, subjects and procedure are (must be) expressly regulated by the Constitution and laws.

In continuation, the next issue addressed concerns the issue of *Parliament's liability in the case of the representative mandate* (subsection 4.3.2.), Which differs markedly from the previous responsibility in that, in relation to the mandatory mandate (which determines the revocation of members of Parliament), the representative mandate does not this type of revocation may have the effect, since once elected parliamentarians assembled in the parliamentary assembly have a general, collective mandate, given by the whole nation and not only by the constituency in which they were elected [49, pp. 301-302]. Characteristic of this type of mandate are such liability measures, such as: *revocation of the Parliament as a whole*, in the form of the *Abberufunngsrecht* procedure [17, p. 446] (right of collective revocation of the legislature by the electorate) and *dissolution of Parliament* (by state authorities).

In practice, the *general revocation of Parliament* is very rare (being used in certain Swiss cantons, such as Bern, Lucerne, Bale), while the *dissolution of Parliament* is quite widespread in democratic states organized on the basis of the principle of separation of powers, being expressly regulated in the Fundamental Laws. Starting from the fact that the *dissolution of the Parliament* represents a measure of constitutional responsibility of the Parliament, the development of this subject is realized in the third section of the chapter.

The last subsection (4.3.3.) is devoted to *other types of Parliament's legal liability*, comprising practically a brief exposition on the typology of Parliament's liability (invoked at the beginning of the chapter), based on two criteria: *Parliament's competence* and *Parliament's relations with other authorities*.

Regarding the typology of Parliament's responsibility based on competences (which includes: *legal responsibility for legislative activity; legal responsibility for control activity and legal responsibility for exercising other functions*), it is concluded that it is difficult to assess what kind of legal responsibility Parliament could bear (especially as the supreme representative authority in the state) for its control activity, but also for the exercise of the other functions, taking into account the fact that the law does not regulate anything in this respect. Consequently, it is considered that the Parliament is not legally liable for the activities it carries out in the exercise of its functions, except for the legislative activity (which is seen as a responsibility towards the authority of constitutional jurisdiction [49, p. 400]).

Regarding *Parliament's accountability in relations with other public authorities* (which includes: *Parliament's accountability in relations with the executive* [specifically: *accountability in relations with the Head of State and accountability in relations with the Government*] and *Parliament's accountability in relations with the judicial authority*) states that, in the first case, it is the legal liability resulting in the dissolution of the Parliament, and in the second - the legal liability of the Parliament involved in the context of constitutional review (both

developed in the next section of the paper).

The next section contains a separate analysis of the *constitutional responsibility of the Parliament* (*section 4.4*.), Being initiated with the specification of the opportunity of theoretical development of the issue in question in order to substantiate the theory of parliamentary responsibility which, lately, tends to become an important guarantee of fulfilling the decisive role. of the Parliament in building the rule of law in the Republic of Moldova. In other words, it is precisely this legal institution (being well outlined) that is called to consolidate the responsibility of the Parliament for the finality of the nominated process [33, p. 85; 38, pp. 183].

Starting from the mentioned necessity and opportunity, in the following is proposed a brief approach of the institution of the *constitutional responsibility of the Parliament*, based on the ideas set out in the doctrine and the legal regulations in force. It should be noted at the outset that, in general, in the literature, the constitutional liability of Parliament is interpreted *lato sensu* as a distinct form of legal liability that arises in case of non-execution or improper execution of constitutional obligations or abuse of constitutional rights [53, p. 54]. So, the starting point for the investigation of this form of liability are the constitutional norms, which regulate both the constitutional sanctions and the grounds for their application.

As argued in the previous chapter of the paper, one of the constitutional sanctions applicable to Parliament is its *dissolution*. The grounds for applying this sanction are expressly regulated in art. 85 of the *Constitution of the Republic of Moldova*, which stipulates that the dissolution of the Parliament is possible: in case of impossibility of forming the Government and in case of blocking the procedure for adopting laws for 3 months. In the context of the analysis of these constitutional provisions, important arguments are brought to demonstrate the juridical-constitutional character of the responsibility that they prescribe to the detriment of the political character recognized by the doctrine. These are summarized in the following [p. 189]:

- the grounds, conditions and procedure of dissolution as a sanction are expressly regulated by the Constitution (which emphasizes the legal nature of the liability in question, to the detriment of the political one);

- the court competent to apply liability is also a special one (characteristic of the institution of constitutional liability [45, pp. 17-20]), involving subjects of constitutional law - the Head of State and the Constitutional Court.

Another topic developed in context is the sanction that intervenes in case of violation by the Parliament of the limits of the legislation imposed by the constituent power. Such liability of Parliament is based on a finding of a breach of the constitutional rules on the competence or procedure for the adoption of the law. By declaring a law unconstitutional, the Constitutional Court (as a court of constitutional liability in this case) finds an imbalance between the actions of Parliament and the provisions of the Constitution. Thus, the mission of this court is a double one: finding the violation of the Constitution and, at the same time, sanctioning the Parliament by forcing it to give up an unconstitutional law or to

amend it, restoring the initial constitutional balance [25, p. 55].

All these moments confirm once again that for the violation of the constitutional norms the constitutional responsibility intervenes, and the Parliament is a real subject of this responsibility, being able to be sanctioned in this sense regardless of the existence or the form of guilt [54, p. 33; 56, p. 293; 55, p. 22]) if it adopts laws, later declared unconstitutional, it is impossible to form the Government or blocks the procedure for adopting laws.

A last aspect approached in this section refers to the responsibility of the Parliament in the relations with the Head of State, being concretely about his *veto* right. After a brief characterization of the forms of *veto* (absolute, qualified, suspensive and translational), it is concluded that only in the case of absolute *veto*, one can possibly speak of an effective sanctioning of Parliament (if the law provided the grounds in the basis on which it can be invoked). Thus, a constitutional sanction of the Parliament could intervene only by definitively blocking the legal effects of a law adopted by it (which can be achieved either by an absolute *veto* of the Head of State or by a popular *veto*, which implies a legislative referendum by which the electorate has the right to reject the laws of the Parliament [49, p. 332], an institution currently unsuitable for the Republic of Moldova).

The final section of Chapter 2 is devoted to the issue of *Parliament's criminal liability* (*section 4.5*.), Being structured in three subsections according to the main issues addressed: general considerations on the criminal liability of the legal person (*subsection 4.5.1*.), Criminal immunity. of the state (*subsection 4.5.2*.) and the criminal immunity of public authorities (*subsection 4.5.3*.). The detailed development of these aspects finally allowed to conclude that the Parliament has criminal immunity, both in its capacity of representative public authority (in this case being its own political and legal (constitutional) responsibility [33, pp. 85-89]), as well as in his capacity as a legal person, not being liable to criminal liability according to the express provisions of the criminal law.

Chapter 5, entitled ***Responsibility of the Members of the Parliament as a dimension of parliamentary accountability***, contains a detailed study of another dimension of parliamentary accountability, namely individual responsibility. Corresponding to the complexity of this issue, the chapter was structured in three sections (some of them being subdivided into subsections) focused on several important aspects such as: responsibility as an element of the deputy's status (*section 5.1*.); parliamentary immunity - factor limiting the deputy's liability (*section 5.2*.) and inviolability in the context of deputies' criminal liability (*section 5.3*.).

The chapter begins with the issue of *liability as an element of the deputy's status* (*section 5.1*.), In the context of which is presented both the need for liability of these subjects of law, and a detailed analysis of the forms of liability of deputies. From the very beginning (*subsection 5.1.1*.) It is specified that in the exercise of the mandate the deputies are liable for the following forms of liability [39, p. 299; 38, pp. 219; 32, p. 36]: *disciplinary, contraventional, constitutional* and *criminal*.

The study of the *disciplinary liability of the deputies* (subsection 5.1.2.) A. Highlighted the fact that unlike other categories of public dignitaries, the legislation

in the field (*Regulation of the Parliament of the Republic of Moldova* and *Law on the status of deputy in Parliament* no. 39/2005) does not expressly provide disciplinary liability of deputies. In this respect, *Parliament's Rules of Procedure* regulate only certain prohibitions, as well as sanctions for violating the provisions of the Rules of Procedure applicable to Members. This moment in conjunction with the ideas set out in the doctrine [3, pp. 122-123] and with the provisions of the *Law on the status of persons with positions of public dignity* no. 199/2010 (art. 23: «(1) The dignitary exercises his mandate in good faith. In case of violation of this provision, the dignitary bears personal responsibility. (2) violations committed in the exercise of the mandate attract disciplinary, civil, contraventional or criminal liability in conditions of the law «), allowed to conclude that the deputies, as well as all public dignitaries (of the category to which they belong) are liable to *disciplinary responsibility*, being able to be disciplined by the chairman of the sitting, the chairmen of the parliamentary committees and the Parliament with the vote of the majority present.

Regarding the issue attested in the constitutional jurisprudence, related to the proposal to sanction the unmotivated absences of the deputies with the loss of the mandate, it is argued the position according to which for the unmotivated absences the deputies should not be sanctioned with the loss of the mandate (as a measure of constitutional responsibility). it is essentially a disciplinary offense for the commission of which *Parliament's Rules of Procedure* provide for disciplinary measures, including financial penalties.

In the context of the investigation of the *contravention liability of the deputies* (subsection 5.1.3.), for the beginning it is specified that the Framework Law regulating their status (*Law on the status of the deputy in the Parliament* no. 39/2005), does not expressly establish the possibility to attract deputies to such form of legal liability. However, it cannot be denied that in their capacity as natural persons, the parliamentarians can still be subject to the contravention liability, moment that can be deduced from the provisions of art. 10 of the same Framework Law, which admits a possible application of contravention measures [34, p. 56; 38, pp. 225].

Based on the *Contravention Code*, it is found that the deputy can be held liable both in his capacity as a natural person and in his capacity as a public dignitary. In the latter case, the contravention sanction can be applied by the *court, the National Anticorruption Center, the National Integrity Council and the police* (*and the subjects who fulfill its attributions*). For committing some contraventions, the deputy can be cumulatively attracted to both the contraventional and the constitutional liability. These are the contraventions that violate the regime of declaring wealth and personal interests, the regime of conflicts of interest and incompatibilities, for which the constitutional sanction - *lifting of the mandate* (and, respectively, *termination in law of the mandate* - respectively in case of non-compliance) incompatibilities). It is important that the nature of these two forms of legal liability allows their cumulated application on the basis of the same legal basis [32, p. 38; 38, pp. 226].

Finally, it is argued that the institution of *contravention liability of deputies*

requires distinct attention from the legislator, as this category of subjects of law, based on the principle of equality, must be liable for any violation of the law and, at the same time, be in the same measure protected by law, by enshrining clear and simple procedures for prosecution, as well as the possibility to challenge the legality of their conduct, by virtue of free access to justice, recognized to all at the constitutional level.

The last form of legal liability analyzed within this compartment is the *constitutional liability of the deputies* (subsection 5.1.4.), A rather important subject, especially from the perspective of the constitutional status of the category given by subjects of law. In essence, this form of liability is closely linked to the obligation of deputies to respect the Constitution and the laws, rights and freedoms of citizens, the interests of the state, which are also the object of constitutional crimes committed by them [38, p. 227; 32, pp. 38].

Starting from the conditions of the current level of development of the theory of constitutional liability, it is argued that the *constitutional liability of deputies* can be identified mainly on the basis of the sanction applied, which may consist in *legal termination of the mandate* (in case of incompatibility), *lifting the mandate* (as a forced termination of the mandate) and *lifting the parliamentary immunity*, in this sense, the grounds may be different, but obligatorily regulated in the Fundamental Law of the state and in the Framework Law in the field [32, p. 38; 38, pp. 228].

In the context of the analysis of these constitutional sanctions and of the grounds on the basis of which they are applied to the deputies, some shortcomings are found, especially regarding the mechanism for their realization. In particular, there is a lack of legal regulation of the mechanism for lifting the mandate of the deputy and a lack of regulation of the finality of the procedure for lifting the parliamentary immunity in case the deputy is found guilty of committing the crime. Respectively, in the first case it is proposed the elaboration and adoption of a law in the field (or the completion of the existing normative framework with appropriate norms), as an absolutely necessary measure to cancel the declarative character of the institution of lifting the deputy mandate and ensuring its effective realization. In the second case, it is proposed to expressly regulate the legal termination of the mandate of the deputy as a consequence of his final conviction.

The second section of the chapter is devoted to the issue of parliamentary immunity as an important aspect of the institution of legal liability of deputies (*5.2. Parliamentary immunity - factor limiting the responsibility of the deputy*). The study focuses in particular on two moments: the origin and justification of parliamentary immunity (*subsection 5.2.1.*) and the comparative approach of parliamentary immunity versus the irresponsibility of the deputy (*subsection 5.2.2.*).

To begin with (in *subsection 5.2.1.*) It is reiterated that the institution of parliamentary immunity was conceived as a protection granted to deputies against the actions and pressures of other powers in the state [13, p. 15]. It aims to guarantee the freedom of expression of the parliamentarian and his protection against repressive, abusive or harassing prosecutions. The important thing is that immunity protects the mandate itself, having an objective and imperative character, therefore, it does not constitute a subjective right, which the parliamentarian could give up, and

no privilege, contrary to the equality of citizens before the law. Therefore, *immunity* is the consequence of an imperative of the constitutional status of the Parliament and of the principle according to which the parliamentarians are in the service of the people [7, pp. 46-47]. By guaranteeing and protecting the freedom of expression of Members, immunity also has the role of protecting in particular Members representing the parliamentary opposition [19].

Beyond the role and necessity of parliamentary immunity, distinct attention is paid to the categories of immunity (in *subsection 5.2.2*.) Available to Members, namely: on the one hand, the "irresponsibility of the parliamentarian" or his freedom of expression «regarding to the prosecution for the opinions and votes expressed in the exercise of its functions; on the other hand, "parliamentary inviolability" or «immunity in the strict sense», which protects him from any arrest, detention or prosecution without the authorization of the body to which he belongs. In order to develop these two categories of immunity, it is specified that *irresponsibility (lack of responsibility)* is only for the votes and opinions expressed in the exercise of the mandate, defending two basic rights of the parliamentarian: the right to vote and freedom of speech. This irresponsibility is *absolute*, *perpetual*, *substantive* and exclusively *functional* [7, p. 47]. Consequently, the deputy's irresponsibility is a *special* one, because it relates only to certain "actions", as well as relative, because it applies only under certain conditions. It lasts throughout the term for the acts committed during its exercise [51, pp. 11].

In turn, *inviolability* refers to the prohibition of arresting, searching, detaining or prosecuting, for criminal or misdemeanor acts, the parliamentarian without the consent of the Parliament. It is a *procedural immunity*, as it may prevent the said procedural acts only during the term of office; after its termination, he is no longer defended, and during the period of immunity the limitation period is suspended. Moreover, inviolability refers exclusively to criminal and misdemeanor liability, not to civil liability [7, p. 48; 8, pp. 274]. Therefore, the inviolability of the parliamentarian refers only to acts foreign to the exercise of his mandate. It aims to prevent a parliamentarian from being deprived of the opportunity to exercise his office due to repressive and arbitrary pursuits, inspired by political motives. Inviolability does not suppress repression, but delays the onset of the repressive procedure and, therefore, suspends the course of criminal or misdemeanor action [7, p. 48].

Therefore, in general, it is specified that *immunity* does not confer absurd privileges to the parliamentarian in relation to the requirements of the criminal law. It shall protect him absolutely only in respect of opinions and votes cast by virtue of the mandate democratically entrusted to him by the electorate. For crimes that have nothing to do with the fulfillment of this mandate, the parliamentarian is legally responsible like any other citizen, the only facilities that are recognized being procedural [51, p. 111]. In conclusion, the need for *parliamentary immunity* as a valuable guarantee of the parliamentary mandate in the contemporary world is emphasized. It is important that it is not absolutized, because in this way its purpose will be distorted - the parliamentarian becoming an intangible person, which contradicts the essence of the rule of law.

The last section of the chapter, representing a logical sequence of the subject from the previous section, is devoted to the issue of the inviolability of deputies in the context of their criminal liability (*section 5.3*.). In order to motivate the study, it is mentioned that in the contemporary period, one of the most pressing challenges to the rule of law, democracy and human rights is the fragile balance between *parliamentary immunity* as a means of protecting the mandate of the deputy [27, p. 293]) and the effective accountability of parliamentarians for the crimes committed. Specifically, in most cases, the latter is completely excluded as it is under the protective screen of *parliamentary immunity*. There may be several causes, but in order to change the emphasis, it is necessary to regulate coherently and sufficiently the very process of prosecuting these "special" subjects and to apply in good faith the legislation in the field, respecting the values and principles of the rule of law [40, p. 51]. Starting from these moments, it is proposed to review the «mechanism of criminal prosecution of deputies» as regulated by law (*Constitution of the Republic of Moldova, Law on the status of deputy in Parliament and Regulation of Parliament*) and interpreted by the constitutional court.

In the first subsection (*5.3.1. Comparative parliamentary inviolability in the comparative plan*) is invoked the experience of other states in the field, specifying that the degree of extension of parliamentary inviolability varies greatly from one country to another. The very nature of this aspect of immunity gives rise, for its application, to a diversity of legal regimes. In particular, it is mentioned that some states do not know this institution, while in some countries, its extension is very limited: inviolability applies only from a civil point of view, and from a criminal point of view the parliament does not enjoy any specific protection and is treated in equally with other citizens.

The duration of parliamentary immunity also varies from state to state. Certain parliamentary regimes extend this privilege to criminal proceedings initiated on behalf of the deputy before his election. In other states, although Parliament's authorization is not required to continue criminal proceedings already initiated, the Assembly may, either ex officio or at the request of the interested party, request the suspension of criminal proceedings or the lifting of coercive measures during the parliamentary term.

Finally, it is stated that Members of the European Parliament also enjoy privileges and immunities under the *Protocol (No.7) on the Privileges and Immunities of the European Union, annexed to the EU Treaties* [50], which gives them the legal regime of traditional parliamentary immunity, of which benefits the members of the national legislative forums.

The second subsection (*5.3.2. Parliamentary inviolability in the Republic of Moldova*) is devoted to the analysis of parliamentary immunity regulated by the legislation of the Republic of Moldova and interpreted by the constitutional court.

First of all, it is reiterated that the immunity of the deputy against criminal liability should not be considered as a possibility to avoid liability for the crimes committed. Immunity is established for the purpose of stopping repressive or abusive pursuits for political reasons, in order to determine a certain behavior of the deputy or to make him docile to certain forces. in case of real crimes, the immunity

of the deputy is suspended (synonymous notion in the case given to the one of *lifting* - e.n.) by the Parliament. However, if the Member has committed the crime and Parliament does not suspend immunity, the question arises as to whether it can serve as a ground for release from liability. The investigators deny this, claiming that after the expiration of the mandate, the former deputy will be charged with criminal liability, because his inviolability acts only during the mandate. Thus, inviolability does not suppress repression, but postpones it for a period of time [8, pp. 274-275].

At the same time, it is stated that *inviolability does not prevent any prosecution* of the deputy, as the legislation expressly provides that "without the consent of Parliament, the deputy cannot be: detained, arrested, searched and prosecuted, except in cases of flagrant crime." In the event of a flagrant offense, the Member may be detained at home for a period of 24 hours only with the prior consent of the Prosecutor General, who shall without delay inform the Chairman of Parliament of his apprehension, detention, arrest or search of the Member in other circumstances or for other reasons are not allowed.

Thus, the protection of inviolability operates only for certain restrictive procedural measures, expressly and exhaustively listed by the Constitution and the legislation in force: *detention, arrest, search*. Only with these reservations, the criminal investigation can be started and exercised regarding the deputy *without the need to waive the immunity*. At the same time, at the end of the criminal investigation, the sending of the case to court by the prosecutor who drafted the indictment can be performed only after the immunity of the deputy is lifted, under the conditions established by the *Rules of Parliament*.

Therefore, it is concluded that [38, p. 255; 40, p. 58]: regarding the deputy, the *criminal investigation can be started and exercised without the need to waive the immunity*; the waiver of immunity is *mandatory* for the application of detention, arrest and search; the application of such coercive measures *without lifting the parliamentary immunity* is allowed only in case of flagrant crime; *the case can be sent to court only after the immunity of the deputy is lifted*.

Regarding the *procedure for waiving parliamentary immunity* (regulated in Articles 94-98 of *Parliament's Rules of Procedure*), the following relevant points are emphasized: firstly, it is important that Parliament, as the authority deciding on waiving immunity, confines itself to assessing whether in this case it is done in good faith, in the spirit of institutional loyalty, and if it concerns facts likely to justify the violation brought - through the mentioned measures - to the status of parliamentarian; Secondly, by approving or rejecting the application, Parliament must not become a body of jurisdiction. The waiver of immunity has no significance in terms of the legal qualification of the deed, which is an exclusive attribute of the court [7, pp. 48-49]. In other words, when examining the request for the waiver of *parliamentary immunity*, Parliament should assess only whether the inviolability, in its capacity as a temporary interruption of the judicial procedure, should be lifted immediately or whether it is not preferable to wait until the parliamentary term expires. Thirdly, it is important for Parliament to decide on the request for the waiver of immunity by *open* vote of the majority of Parliament Members *present* in open session.

Distinct attention in the context is given to the possibility offered by law to the Parliament (in particular, art. 11 par. (2) of the *Law on the status of the deputy in the Parliament*), to order the immediate revocation of the detention of the deputy at home (for 24 hours), if it considers that there is no ground for detention «as a result of a detailed analysis of this possibility it is concluded that in essence this implies an unfounded and illegal interference of the legislature in the judiciary [38, p. 261], such a substitution in the attributions justice being inadmissible.

In conclusion, recognizing that the subject matter is far from exhausted, it is specified that the mechanism of prosecuting deputies comprises two distinct, interdependent stages: the *procedure of lifting parliamentary immunity* (as a form of constitutional liability) and the *criminal procedure itself* (possibly resulting in the actual criminal prosecution of the deputy and the application of the criminal punishment). The biggest difficulties are the procedure of lifting the *parliamentary immunity*, without which the criminal liability of the deputy is practically impossible. This implies the need for greater diligence on the part of the legislator in regulating all important aspects of the procedure in question, in order to avoid illegal and unfounded "abuses" likely to reinforce the irresponsibility and intangibility of parliamentarians who directly compromise the principles and values of the rule of law.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Concluding the study on the *theory of parliamentary responsibility*, the following general ideas are summarized that outline the essence of this institution:

Parliamentary accountability «is an institution of parliamentary law, which includes the *liability of Parliament* and *the liability of parliamentarians* for violating various rules of law or otherwise; an institution similar to "ministerial responsibility" which is becoming increasingly relevant and necessary today in the context of consolidation the responsibility and liability of the state and its authorities in the conditions of building the rule of law [40, p. 265].

The accountability of the Parliament and the deputies is based on two important pillars: *the theory of public power accountability* as a fundamental foundation and justification that justifies the necessity and indispensability of parliamentary accountability in the contemporary rule of law and the *theory of representation* in its determinant essence of parliamentary institution and measure/limit of parliamentary responsibility.

I. Parliament's responsibility:

The responsibility of the Parliament is to be perceived as an absolutely necessary condition for the process of making the power accountable for the way it exercises its functions, being a relevant indicator of the legal nature of the state.

The main forms of liability of the legislative forum are: *political liability* (which is mostly conventional) and *legal liability* (which is reduced to *constitutional liability*).

Regarding the theory of the politico-moral responsibility of the Parliament: only the deputies are liable to *politico-moral responsibility* (being able to be sanctioned with exclusion from the party), sanction that can intervene both during

the exercise of the mandate and at its end; while the Parliament is liable only for *political responsibility* which, as a rule, intervenes at the expiration of the mandate and implies as a sanction the non-election for a new mandate.

However, from the perspective of the main political sanction applied (non-election for a new term), the *political responsibility* of the Parliament, but also of the parliamentarians, is *illusory*, as the Parliament is not re-elected in the same composition and the parliamentarians are not elected individually, but on lists proposed by political parties. Respectively, the effect of the given political sanction is directly reflected on the parties participating in the elections and not on the direct parliamentarians who, paradoxically, could obtain even more consecutive mandates despite the blame exposed by the people in the elections on the activity / conduct of the whole Parliament during the exercise of its mandate.

In its strict sense, only the deputy can be *politically liable*, the political sanction being applied by the party that submitted him as a candidate (by exclusion from the party) [40, p. 266].

Regarding the institution of Parliament's responsibility from the perspective of the *type of mandate* it exercises, two important moments are:

-In the conditions of the *imperative mandate*, the responsibility concerns only the parliamentarians, who can be revoked individually both by the electorate (through elections, for non-fulfillment of the assumed commitments), and by the party they belong to / were part of in case of changing political affiliation and not only (for violating party discipline, political principles and rules, etc.). In both cases, the liability is a legal one, provided that the grounds, subjects and procedure are expressly regulated by the Constitutions and laws.

-In relation to the imperative mandate (which determines the revocation of members of Parliament), the *representative mandate* cannot have the effect of this type of revocation, because once elected deputies assembled in the parliamentary assembly have a general, collective mandate, given by the whole nation and not only the constituency in which they were elected. Characteristic of this type of mandate are such liability measures, such as: *the revocation of the Parliament as a whole* (which implies the right of collective revocation of the legislative body - as an exception) and *the dissolution of the Parliament* (under the conditions provided by the Constitution).

Beyond the differences between the legal systems of different states, the legal *liability of the Parliament* as a whole is possible only under the conditions of the representative mandate, through the institution of *dissolution* (as a constitutional sanction), a characteristic moment of the Republic of Moldova [40, p. 267] .

In the same context, the main measures of legal-constitutional sanctioning of the Parliament of the Republic of Moldova are: *dissolution* (given in the joint competence of the Head of State and the Constitutional Court) and *declaration of unconstitutionality of laws* (exclusive competence of the Constitutional Court). seen as a responsibility for legislative activity.

The responsibility of the Parliament for the legislative activity depends on its essence, as it is qualified *expresis verbis* at constitutional level, as the only legislative authority in the state. So, even if the Parliament occupies a privileged

position among the state bodies, due to the method of appointment and the powers established by the Constitution, the rule of law requires that the legislature itself be subject to control, following that in issuing its acts to comply with constitutional provisions . Assuming that Parliament is obliged in its activity (especially legislative) to submit only to the law and the Constitution, any deviation from their rules on legislation (and not only) would consequently imply its responsibility (anticipated by verifying the constitutionality of the law).

Therefore, the accountability of the Parliament for its legislative activity is achieved through *constitutional review*, which essentially has a decisive contribution to achieving institutional balance within the state, ensuring compliance of its core activities with the provisions of the Constitution [40, p. 268].

Parliament's responsibility for legislative activity (under the above aspect) is a distinct form of legal liability - *constitutional liability*.

Starting from the legislation in force and from the main ideas of the theory of constitutional liability, it should be noted that for violating the constitutional norms there is constitutional liability, and the Parliament is a real subject of this liability (can be sanctioned in this regard regardless of existence or form of guilt) if it adopts laws, later declared unconstitutional, it is impossible to form the Government or it blocks the procedure for adopting laws. It is not excluded that a careful and in-depth analysis of the constitutional text may identify other grounds on which to intervene Parliament's constitutional responsibility, but this requires a well-founded and sufficiently developed theory of constitutional responsibility [40, pp. 269].

A final aspect of Parliament's accountability, which deserves separate attention, is related to possible damages caused by laws declared unconstitutional. Even if the legislation in force does not provide for the occurrence of the liability of the Parliament in such cases, it is clear that the patrimonial damage of the person's rights cannot remain outside the liability, regardless of who would be guilty of it. The subject responsible for guaranteeing the rights of the person in this case is obviously *the state.*

In accordance with this idea, at the level of the law it is established that "damages caused to natural and legal persons by the application of a normative act recognized as unconstitutional are repaired under the conditions of the law". Therefore, in such situations the state must compensate the persons who have been harmed by unconstitutional normative acts (including laws). It is paradoxical, however, that at the constitutional level (art. 53) there is an obligation of the state to be liable only if the persons have been harmed by illegal administrative acts and judicial errors. In this sense, it is absolutely necessary to enshrine the obligation of the state to compensate the damages caused by unconstitutional normative acts, in which case we will talk about an indirect liability of the Parliament for its legislative activity, a patrimonial liability mediated by the state.

Recommendations:

1. Starting from the fact that the Constitution of the Republic of Moldova provides for measures of constitutional sanction of the Parliament (such as dissolution, declaration of unconstitutionality of its acts), cases and concrete grounds in which they may intervene, competent courts to apply them, we consider

it necessary to strengthen in the text of the Fundamental Law on the *Constitutional Liability* of the Parliament of the Republic of Moldova, with the express specification of the given form of legal liability.

2. Given that recently, the Constitutional Court of the Republic of Moldova is increasingly notified of cases of violation / violation of the rules of the Rules of Procedure of the Parliament, it is necessary to develop and implement a mechanism to hold Parliament accountable - by annulment of its acts for violation of legal norms, including legislative technique, which regulate the legislative process. In the absence of such a mechanism, the sanctioning of violations admitted by the Parliament remains outside the area of competence of the Constitutional Court, which is equivalent to the lack of accountability and discipline of the Parliament in the legislative process.

3. In order to consolidate the constitutional principle of mutual responsibility of the state and the citizen, we consider it necessary to clearly outline and consolidate, including at constitutional level, the responsibility of the state for «damages caused to individuals and legal entities by applying a normative act recognized as unconstitutional», which essentially implies an indirect responsibility of the Parliament as the supreme legislative forum in the state.

II. Responsibility of the Parliament Members:

In general, the responsibility of parliamentarians must be based on their *responsibility*, which at the moment is not clearly outlined or properly assumed (taking into account the fact that they are not obliged to take the oath of allegiance). Such a moment is essential in the work of such civil servants (such as parliamentary dignitaries), especially since they are the ones who largely decide the fate of the country, society and each of us.

Moreover, taking into account the fact that the deputies obtain their mandate directly from the people, through elections, it is absolutely necessary to take an oath before the people, by which to assume responsibility for the important mission assumed - representation and realization of the general interests of society. (especially since the parliamentary mandate is a representative one, the deputies not being obliged to «account» in front of the electorate for the activity carried out).

Given the obligation of the oath of allegiance for the civil servant, the responsibility constitutes a principle, an obligation and an indispensable condition for the functioning of the public administration, of the state authorities, therefore also of the state as a whole. In this context, parliamentary dignitaries should not be an exception, but like all civil servants and other dignitaries should assume responsibility in its capacity of principle, obligation and indispensable condition for the functioning of the legislature under the rule of law.

Recommendation: in order to make the deputies responsible, we propose to complete the constitutional text and the Rules of Procedure of the Parliament with a distinct obligation of them - to take the oath at the inauguration (with the concrete regulation of the content of the oath).

Regarding the *legal liability of deputies*, it should be noted that they in the exercise of their mandate are liable for the following forms of liability: *disciplinary*,

contraventional, constitutional and *criminal*.

a) Disciplinary liability, even if not expressly enshrined as such (the legislator not operating with such phrases as «disciplinary liability», «disciplinary offense», «disciplinary sanction»), is applicable to Members, as discipline is indispensable to any human activity, including The prohibitions imposed on Members by *Parliament's Rules of Procedure*, as well as the sanctions provided in it (for violating its provisions), undoubtedly outlines the institution of *disciplinary liability of deputies*. Therefore, the deputies are liable to *disciplinary liability*, and may be disciplined by the chairman of the sitting, the chairmen of the parliamentary committees and the Parliament with the vote of the majority of the deputies present, depending on the violations committed [36, p. 56].

Regarding the issue attested in the constitutional jurisprudence, related to the proposal to sanction the unjustified absences of the deputies with the loss of the mandate, we consider that for unmotivated absences the deputies should not be sanctioned with the loss of the mandate, as this is essentially a disciplinary violation for committing which the *Parliament's Rules of Procedure* provides for disciplinary measures, including pecuniary sanctions. Moreover, the loss of the mandate as a sanctioning measure (being of a constitutional nature) in its essence does not imply a discipline of the deputy, being thus clearly distinct from the specifics of disciplinary sanctions (warning, reprimand, etc.), which pursue this purpose [36, p. 56].

As a result of the analysis, we find that beyond the deviations, sanctions and enforcement procedure, our regulatory framework does not offer deputies liable to disciplinary liability to challenge (neither internally nor externally) the measures and sanctions applied to defend their rights. which leads us to the idea that in this segment deputies are deprived of free access to justice (in a broad sense).

Consequently, given that the reality of recent decades has shown how fierce the «confrontation» between the parliamentary majority and the opposition can be, we believe that guaranteeing the deputy's independence needs to be strengthened by recognizing the right to free access to justice. in the disciplinary process, in other words, the possibility of the deputy to contest in internal and external order the procedural acts of disciplinary liability. This possibility would strengthen not only the independence of the deputy, the *overall* position of the opposition, but also the order and legality in within the legislative forum.

b) The contraventional liability of the deputies is not expressly regulated in the framework-law, being admitted only the possibility of applying the measures of contraventional coercion against these subjects in specific procedural conditions. Based on the *Contravention Code*, it can be found that the deputy can be held liable both in his capacity as a natural person and in his capacity as a public dignitary. In the latter case, the contravention sanction can be applied by *the court, the National Anticorruption Center, the National Integrity Council* and *the police* (and *the subjects who fulfill their attributes*). For committing some contraventions, the deputy can be cumulatively attracted to both the contraventional and the constitutional liability. These are the contraventions that violate the regime of declaring wealth and personal interests, the regime of conflicts of interest and incompatibilities, for which the constitutional sanction - *lifting the mandate* (and,

respectively, *termination in law of the mandate* - respectively in case of non-compliance) incompatibilities). In our opinion, the nature of these two forms of legal liability allows their cumulated application on the basis of the same legal basis [34, p. 38; 40, pp. 226].

Given that the examination of some of these contraventions is given by law in the jurisdiction of the court (which inevitably implies the need to waive parliamentary immunity), we consider that the procedure for prosecuting deputies in such cases becomes extremely complicated and cumbersome. In our opinion, everything related to the finding and examination of violations of the regime of declaration of wealth and personal interests, the regime of conflicts of interest and incompatibilities must fall within the competence of the National Integrity Authority, the deputy having the right to appeal in court its acts.

Finally, we are of the opinion that the institution of the *contravention liability of the deputies* requires a distinct attention from the legislator, since this category of subjects of law, based on the principle of equality, must be responsible for any violation of the law and, at the same time, be equally protected by law, by establishing clear and simple procedures for prosecution, as well as the possibility to challenge the legality of their conduct, by virtue of free access to justice, recognized to all at the constitutional level.

c) despite the fact that the local legislator avoids regulating the *constitutional liability* of deputies, these subjects are liable to such a form of liability, because they are individual subjects (with constitutional status) who in their activity may admit derogations from constitutional norms and even abuses of constitutional rights. In other words, even if the constitutional responsibility of the deputies is not expressly enshrined, it can still be attested and deduced from the relevant legal norms, being categorically distinct from other forms of their legal responsibility.

Starting from the current level of development of the theory of constitutional liability, the *constitutional liability of deputies* can be identified mainly based on the sanctions applied, which may consist in the *legal termination of the mandate* (in case of incompatibility, but also final conviction by the court of trial), the *lifting of the mandate* (as a forced termination of the mandate) and *the lifting of the parliamentary immunity*. In this sense, the grounds may be different, but they must be regulated in the Fundamental Law or in the Framework Law in the field [34, p. 38; 40, pp. 228].

Recommendations:

1. In the context of the analysis of these constitutional sanctions and of the grounds on the basis of which they are applied to the deputies, some shortcomings were found, especially regarding the mechanism for their realization. In particular, there is a lack of legal regulation of the mechanism for *lifting the mandate of the deputy* and a lack of regulation of the finality of the procedure for *lifting the parliamentary immunity* in case the deputy is found guilty of committing a crime. Respectively, in the first case we propose the elaboration and adoption of a law in the field (or the completion of the existing normative framework with appropriate norms), as an absolutely necessary measure to cancel the declaratory character of the institution of *lifting the deputy mandate* and ensuring its effective realization. In the second case, we consider it necessary to expressly regulate the *legal termination of*

the mandate of the deputy as a consequence of his final conviction.

2. Starting from the special significance of the *constitutional responsibility of the deputies*, we consider that it is to be substantially consolidated at constitutional and legislative level. Important amendments and completions in this regard are required in the Constitution and in the law governing the status of deputies (implicitly in the Rules of Parliament), specifying the constitutional liability that may arise in cases of violation of the Constitution and constitutional law, with the content these crimes and, at the same time, the elaboration of an efficient mechanism for its application [41, p. 306].

d) Regarding the *criminal liability of the deputies*, we specify that the mechanism of its application implies distinct particularities, comprising two distinct, interdependent stages [40, p. 272]:

- *the procedure of lifting the parliamentary immunity* (as a form of constitutional responsibility); and

- *the criminal procedure itself* (possibly resulting in the effective criminal prosecution of the deputy and the application of the criminal punishment).

The biggest difficulties are the procedure of lifting the *parliamentary immunity*, without which the criminal liability of the practical deputy is impossible. This implies the need for greater diligence on the part of the legislator in regulating all important aspects of the procedure in question, in order to avoid illegal and unfounded "abuses" likely to strengthen the irresponsibility and intangibility of parliamentarians that directly compromise the principles and values of the rule of law.

The most dangerous in this respect is the possibility offered by law to the Parliament "to order the immediate revocation of the detention of the deputy at home (for 24 hours), if he considers that there is no reason for detention" (which obviously contradicts his competence to suspend only the course of justice, without intervening or participating in it), as it presupposes an unfounded and illegal interference of the legislature in the sphere of activity of the judiciary.

Recommendation: For the above reasons (previously, in the paper), the intervention of the Parliament during the criminal investigation of the deputy, allowed by law, seems to be more a lever to protect him and evade responsibility for the deed committed. In order to cancel this «role» of the Parliament, we propose to exclude such an attribution from its competence.

With regard to *parliamentary immunity* and *inviolability*, we emphasize that *immunity* (in its sense of irresponsibility, irresponsibility for the votes and opinions expressed in the exercise of the mandate) is absolutely necessary to guarantee the independence and freedom of expression of the deputy in the exercise of his representative mandate (this being an *absolute, perpetual, substantive immunity* and exclusively *functional*). In turn, inviolability (as procedural immunity relating to acts foreign to the exercise of the mandate) is equally necessary especially because it aims to prevent a parliamentarian from being deprived of the possibility of exercising his or her office. due to the repressive and arbitrary pursuit, inspired by political reasons.

From this perspective, it is obvious that the exclusion (annulment) of

parliamentary immunity would represent not only a suppression of some guarantees offered by the Constitution to the deputy for the free and independent exercise of a part of national sovereignty, but also a direct threat, especially to the parliamentary opposition. and political pluralism in general. It is important in this context that *parliamentary immunity* (as a valuable guarantee of the parliamentary mandate in the contemporary world) not be absolutized, because it will distort its purpose - the parliamentarian becoming an intangible person, which contradicts the essence of a rule of law.

In conclusion, given the fact that the responsibility of the Parliament is a new topic both in the landscape of democracy of the Republic of Moldova and in the scientific area, we consider that extensive scientific research is needed (this being only a debut) to contribute to the development a fundamental theory of the responsibility of the supreme legislative body and its members (identified as the *theory of parliamentary responsibility*), which should be the basis for the accountability of public power in the Republic of Moldova as a rule of law and democracy [40, p. 272].

Proposals for future research. Starting from the fact that the doctoral research carried out allowed us to identify a series of aspects of the subject that did not enjoy a proper doctrinal development, but which are of scientific interest at the moment, we consider that in the future, a theoretical attention Distinguished deserves such important moments as:

- liability for violation of the rules of legislative procedure;

- liability for damages caused by laws declared unconstitutional;

- the constitutional liability of the deputies and delimitation from other forms of legal liability;

- lifting the parliamentary immunity, lifting the deputy mandate and legal termination of the parliamentary mandate;

- ensuring the observance of the principle of mutual responsibility of the state and of the citizen, etc.

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ANNOTATION

Micu Victor. ***Parliamentary accountability under the conditions of the rule of law***.
PhD thesis in law; **Specialty 552.01 - Constitutional law. Chisinau, 2021**

Thesis structure: introduction, five chapters, general conclusions and recommendations, bibliography of 344 titles, 175 pages of scientific text. The scientific results are published in 25 scientific papers.

Keywords: parliament, deputy, representation, mandate, representative mandate, imperative mandate, public power responsibility, state responsibility, political responsibility, legal responsibility, constitutional responsibility, parliamentary responsibility, dissolution, termination of office, termination of office, criminal responsibility of the deputy, parliamentary immunity, parliamentary inviolability.

Field of study: constitutional law, parliamentary law.

The goal of the paper is to study the forms of responsibility of Parliament and deputies in order to substantiate the theory of parliamentary responsibility, taking into account the theory of public responsibility and the theory of representation, as well as elucidating theoretical and normative issues in the field and arguing appropriate solutions to optimize the related legal-constitutional framework.

The objectives of the research: the evaluation and appreciation of the degree of theoretical research of the problem of the parliamentary responsibility in the context of the responsibility of the public power and the tracing of the main directions of its research; the analysis of the theory of responsibility of the public power in order to elucidate the forms of responsibility to which the state and its authorities are liable; analysis of the theory of representation in order to outline the constitutional status of the Parliament and the representative essence of the parliamentary mandate, a theory that represents a determinant of the essence of the parliamentary institution and of the measure / limit of the parliamentary responsibility; identification and analysis of the forms of responsibility to which the Parliament as a whole is liable, as a collective subject of law; identification and analysis of the forms of responsibility to which deputies are liable, including in terms of parliamentary immunity and inviolability.

The scientific novelty and originality of the paper consists in the fact that it proposes a distinct vision on the concept / concept of *parliamentary responsibility* (approached in doctrine in different meanings), as well as on the forms of responsibility to which the Parliament and its members are liable. In particular, it argues the need to recognize parliamentary accountability as a distinct branch institution similar to ministerial responsibility.

The results obtained that contribute to solving an important scientific problem lie in substantiating the theory of parliamentary accountability, which allowed the clarification of the forms of accountability of Parliament and deputies, an indispensable moment to create the theoretical basis necessary to optimize the legislation and its application mechanism.

Theoretical significance. The results of the investigation are beneficial to the continuous development of the theory of constitutional law and parliamentary law in terms of holding the supreme legislative authority of the state accountable. The thesis is a monographic source for researchers in the fields of public law, concerned with the issue of liability of the state and its authorities, especially the concrete forms of legal liability of Parliament and deputies.

The applicative value of the paper. The obtained results can serve as indicative landmarks in the subsequent research of the approached problem, as well as in the didactic process as theoretical support within the specialized courses.

Implementation of scientific results. The obtained results can be used to review the legislation in the field, including at the constitutional level, as well as to optimize the mechanism of prosecuting the supreme legislative forum and its members.

MICU Victor

PARLIAMENTARY RESPONSIBILITY

UNDER CONTEMPORARY RULE OF LAW

Specialty:
552.01. - Constitutional law

Summary of the doctoral thesis

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Subsemnatul Ponomarenco Serghei, traducător autorizat de limba engleză, certific exactitatea traducerii cu textul înscrisului, care a fost vizată de mine la 03 martie 2021.

The undersigned Ponomarenco Serghei, authorized translator in English language, do hereby certify the accuracy of the translation with the text of the original document, performed by me on the 03rd of March year 2021.

Semnătura traducătorului
Signature of translator

TRADUCĂTOR ENGLEZĂ, RUSĂ
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