DOCTORAL SCHOOL JURIDICAL, POLITICAL AND SOCIOLOGICAL SCIENCE IN THE NATIONAL CONSORATION ADMINISTRATED BY THE UNIVERSITY OF STATE IN MOLDOVA

For manuscript purposes:
C. Z.U :347.962:340.132(478:498)(043.3)

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LIABILITY OF MAGISTRATES — GUARANTEE THE LEGALITY AND EFFICIENCY OF THE JUDICIAL POWER IN THE REPUBLIC OF MOLDOVA AND ROMANIA

Specialty: 552.01. Constitutional right

The summary of the doctor's thesis in law

Chisinau, 2021

The thesis was developed in the PhD School Science Jurdic, political and Sociological from the National Consortium administered by the State University of Moldova.

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Support for the thesis will take place on **19 March 2021** at 10:00, at the support *committee meeting The public of the PhD thesis* of the PhD School of legal, political and Sociological Sciences of Framework of the national consortium administered by the State University of Moldova, room 18, Block A Student campus, 3/2 Academy str., Mun. Chisinau, Republic of Moldova.

Access: https://zoom.us/j/99074248565?pwd=OGFyMEUvTjFZeW41MjJZeGdCWUV3dz09

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THE CONCEPTUAL BENCHMARKS OF RESEARCH

The timeliness and importance of the subject under investigation. "The judge's responsibility has long been a subject, if not intangible, at least to be avoided for legal doctrine. Recently, the crisis the justice is experiencing (both in Romania and in the Republic of Moldova [14, p. 19), a system and image crisis at the same time made the debates on the magistrate's responsibility a matter of concern for the media and civil society. Naturally, these discussions have been fueled by a number of obvious failures in the act of justice, as well as by some cases of corruption in the judiciary. The repeated criticism of the system, as well as of some of its representatives, has led to positions on the matter. From *a taboo topic*, the magistrate's responsibility has thus become a topic of public interest, which triggered a wide debate. In the context created, the legal doctrine can no longer avoid the matter of magistrate's responsibility, but it has almost a duty to clarify some aspects related to it. This is why the magistrate's liability is now a very current subject and of a clear theoretical and practical interest" [3, p. ix-x].

Starting from these moments (which we fully support) and being aware of the conditions of the transition period, when power has lost much of society's confidence and citizens have quite a lot of suspicion as to the objectivity and impartiality of the achievement of justice, we need to recognize that the question of *the liability of judges* is particularly current [41, p. 10), especially as the achievement of legal and fair justice is a vital necessity for a democratic society [16, p. 320).

In this context, it is practically indisputable that *the quality* and *efficiency of* the conduct of justice depends directly on the attitude of judges toward its realization. Although such an attitude is ensured by several legal means, one of the most important is *the legal liability* for illegal actions or inactions [37, p. 147). From this point of view, we believe that the importance and timeliness of the subject is also emphasized by the fact that, in a democratic society, the presence of irresponsible subjects cannot be tolerated in the sense of lack of responsibility, regardless of their status. Therefore, the judge cannot be excluded from the principle of equality before the law and liability for infringement, even if he is the holder of a functional unit.

Looking from a different perspective, it should be stressed that starting from the fact that the judicial power is the main guarantor of legality in a democratic society, it is self-evident that in order to ensure this standard at the level of society, it is absolutely necessary to ensure it at the level of judicial power. Accordingly, respect for the principle *of legality* within a State is directly dependant on its respect in the process of organizing and operating the judiciary. From this point of view, the need to know *legality* as a standard of judicial power and to ensure it is made clear.

Beyond the existence of an appropriate legal framework for the functioning of the judiciary (as a basis for legality), it is undeniable that compliance with it should not be left solely to the holders of that power (judges/magistrates), and some levers to determine/coerce them into compliance with the law are absolutely necessary (legality assurance mechanism). There is no doubt that the institution *of the liability of judges plays a central role in this context*. Consequently, we can find that the efficiency of the institution responsible for judges depends mostly on the observance of legality as a principle of judicial power.

Despite the importance of this subject, but also its timeliness, we note that the legal doctrine, in recent times, while emphasizing the pblemby of *legality* as a whole, less attention is paid to circumscribing this principle to judicial activity, which of course represents a serious gap in this area. Even more serious is that the very issue of *the liability of judges*, as guarantor of the legality and efficiency of the judiciary, is only superficial, fragmented and tangential in the academic world.

Finally, another argument (but not the last one) that would justify the interest in the subject of the investigation is that the efficiency of the judiciary is substantially dependant on ensuring a balance

between the immunity of judges and their legal liability, since as much power (authority) is granted to them to ensure legality and justice within the state, the mechanism of making the infringement liable must be as effective as it can be. From this point of view, we believe that the issue of *judges' liability* at the present stage is a particularly important and current one, which deserves a commensurate attention both from the legislator and the legal practitioner and from the academic world. The latter has a crucial role to play in providing scientific basis for the legal framework governing the legal liability of the judge in order to ensure the right balance between the specific legal status of the judge and to counter any deviation from the provisions of the law in order to ensure the legality and effectiveness of the judiciary in the rule of law.

Therefore, starting from the actual situation in the area of justice in the area of the liability of judges, its fragmented research into literature, the legislation under constant improvement and the Community legal framework in this area, We have noticed enough premises to carry out a thorough study within the doctoral research project on the institution of judges' liability in Romania and the Republic of Moldova.

The purpose of the research. Being motivated by such state of things, in this paper we proposed to carry out a detailed comparative research of the institution *of the judges' liability* in Republica Moldova and Romania in terms of its legal forms, in view of the shaping of the legal regime, of the particularities that characterize them, as well as the elucidation of possible legislative shortcomings and the formulation of regulatory optimization solutions in this field.

In order to achieve this, the following **research objectives have been set out:**

- the elucidation of the essence and content of legality and efficiency as fundamental principles of justice in the rule of law;

- Analysis and justification of the special status of a judge as a public official (person with a public dignity function in the Republic of Moldova) and of his standards of conduct;

- studying the immunity of the judge as guarantor of the independence of the judge, while attracting him to legal liability;

- Outline the legal regime of the disciplinary liability of the judge of Romania and the Republic of Moldova, in terms of legal features, grounds, content of disciplinary misconduct and applicable disciplinary sanctions;

- Outline the legal regime of the criminal liability of the judge of Romania and the Republic of Moldova as a civil servant and magistrate for committing offenses of service, corruption and justice, as well as special procedural features for its application;

- Outline the legal regime of the civil liability of the judge in terms of the characteristic features and conditions in which it may occur in Romania and the Republic of Moldova and increase the correlation with the state's property liability for legal errors.

Research hypothesis. The liability of judges is a fundamental institution in a rule of law, as it is intended to ensure the legality and efficiency of the judiciary. In order to achieve this task, the liability of judges must have a legal and effective mechanism for regulating and applying concrete forms of legal liability. Taking into account the real situation in the justice system, which shows an increasing presence of the irresponsibility of judges (together with a reduction in the quality of justice and the loss of judicial confidence in it) in both States, we believe that at the moment the mechanism for regulating the liability of judges is affected by various shortcomings and shortcomings, that substantially reduces its efficiency. In order to confirm this hypothesis, in the content of the work we focused in particular on clarifying the legislative shortcomings in the field and arguing for the optimization solutions.

The important scientific issue addressed. The scientific results obtained on the basis of the study of the relevant legal regulations, of the doctrinal views and positions of case-law, including constitutional, in Romania and in the Republic of Moldova have made it possible to solve a major scientific problem in the field related to the considerable development of contemporary theory of judges' liability,

This allowed the juridical regime of their disciplinary, constitutional, criminal and civil liability to be shaped, a necessary moment for the measures to optimize the legislation in the field in the Republic of Moldova and Romania.

Methodological support. In order to address the complex and comparative issue of the liability of judges in the Republic of Moldova and Romania, some important methods of scientific research, indispensable to such research, have been used. This concerns in particular:

- *The comparative method* – which helped us draw a parallel between the institution of responsibility of the judge of the Republic of Moldova and Romania;

- *the systemic method* – applied in particular to the study of regulatory acts in the field and the systemic interpretation of their provisions;

- *the legal-formal method* – which helped us to clarify the specific features of concrete forms of judicial replanting of judges;

- *the logical method* and its analytical and *synthesis processes*, used throughout the research, which have contributed to multilateral research into the scope and practical forms of judicial liability of judges as a guarantee of the legality and efficiency of the judiciary.

The academic support of the investigation is made up of an impressive number of scientific works signed by *Moldovan authors* (such as: GH. Costachi, I. Guceac, T. Carnat, Al. Arseni, D. Baltag,I. Muruianu, V. Popa, P. Railian, S. Brinza, V. Wait, V. Capcelea, V. Cojocaru, E. Club, S. Goriuc, N. Hriptievschi, A. Black, T. Novac, T. Popovici, V. Puscas, Gh. Ulianovschi, etc.), *Romans* (such as: C. Alexe, V. M. Ciobanu, I. In the case of a new contract, the contract was Istrate, C. Danilet, A. Crisu-Ciocinta, I. Deleanu, H. The following are the following Raducanu, F. Dragomir, M. Constantinescu, I. Muraru, C. Duvac, I. Gârbulet, G.-C. Ghernaja, C. The test is based on the following And I do not have the time to do it Lazar, I. Les, T. Manea, A. Mocanu-Suciu, M. Oprea, R.I.Petcu, I. Petre, I. Popa, Al. Porof, O. Peet, A. Radulescu, etc.), *French* (such as: G. Canivet, J. Curtex, G. Freyburger, K. Gwenola, J. Joly-Hurard, B. Lefebvre, E. Valicort, etc.) and *Russians* (such as: Адушкин (UI. Aduskin), В. Жидков, (V. Jidkov), azidance.Ф. Байсалуева (A.F. Baisuieva), Клеандров (M.I. Kleandrov), a.a. Кондрашев (A.A. Kondrasev), Манкевич (I. The Commission therefore decided to re-use the market as a market operator. POB: Sopatov (Russian Sakov Sapunova), B.a. Терехин (V.A. Terehin), etc.).

The theoretical basis of the research was supplemented by a consistent regulatory support (made up of the legislation of Romania and of the Republic of Moldova) and international (mostly made up of European acts outlining the standards of the status of judges) and case law (made up of the acts of the Constitutional Court of the Republic of Moldova and Romania), By the views of the Venice Commission on the subject, reports and studies carried out by international and national institutions in the field.

The scientific novelty of the results obtained. Starting from the fact that the issue of judges' responsibility was also studied in the literature, we believe that the scientific novelty of our research lies in the comparative approach of this issue, as it is drawn a parallel between the responsibility of the judge of the Republic of Moldova and the responsibility of this matter in Romania.

Based on the research carried out in this way, we have succeeded in:

- Let's outline the legal regime of the disciplinary, criminal and civil liability of the judge of the Republic of Moldova and Romania;

- to base the constitutional liability of the judge in theory on the content of the disciplinary liability and the procedural particularities of drawing him/her to criminal liability;

- let us identify important legislative shortcomings in this area, which affect the judge's institution of responsibility and to argue useful optimization solutions.

Theoretical meaning and application value. The results of the investigations are beneficial to the continued development of constitutional law, judicial, civil and criminal law theory.

The paper is a monographic source for research in the fields of public law, focused on the issue of the organization and functioning of the judicial power.

The content of the work, the conclusions and the recommendations made on the subject under investigation can be widely used by both the theorists who will continue their investigations in this field and the practitioners involved in the process of bringing judges to legal responsibility.

In the same way, the results obtained will be used in the teaching process, as theoretical support for specialized courses, as well as as as support for the development of scientific works (monographs, doctoral theses), textbooks, university courses, etc.

Approval of the results. The paper was prepared in the framework of the School for PhD legal, political and Sociological Science, and was examined both in the Steering committee and in the wider evaluation committee.

Publications on the subject of the thesis. The main scientific results obtained were published in a bulky monograph, a collection of scientific studies on the subject of the thesis, in specialized scientific journals (14 articles) and approved in major national and international scientific forums (8 communications).

Volume and structure of the sentence: The sentence is structured according to the purpose of the research and the objectives outlined and comprises: - *introduction* - which provides a justification for the timeliness of the subject and its scientific innovation; *five chapters* – in which the fundamental aspects of the detailed disclosure of the purpose and objectives set out in the introduction are studied; *general conclusions and recommendations* - incorporating the broad-based ideas put forward as a result of the investigations carried out and proposals for action to optimize the problems identified; *bibliography* - represents the documentary and doctrinary support of the thesis, consisting of 322 sources; *7 appendices.*

CONTENT OF THESIS

Chapter I, entitled ***the analysis of the situation in the area of magistrates' liability as a guarantee of the legality and efficiency of the judicial power***, includes an X-ray of the researchers who have been directly or tangentially concerned about the question of the magistrates' liability or of various aspects of it and of the studies carried out in the field. In order to create as clear and concrete a picture as possible of the degree of research of the subject in the literature, the chapter is structured in two compartments, depending on the grouping of sources used as a doctrinal support according to the issues addressed, namely: the legality and efficiency of the judiciary as a subject of scientific research (*section 1.1*.) and the academic interest in the liability of judges (*section 1.2*.), concluding with conclusions in the chapter (*section 1.3.).*

In the first section *(1.1. Legality and efficiency of judicial power as a subject of scientific research*), listed researchers who have helped to study such issues as:

- *The essence of the judicial power* (Muraru I., Tanasescu E.S., Ionescu C., Iorgovan A., Iancu Gh. Cochinescu N., Istrate M, Chiuzbăan G.I., Ionescu S., Les I., Puscas V., Guceac I, Arseni Al., Black B., Ofig. Snochina a, Gurin C, Creanga I, Popa V, Cobaneanu S, Zaporojan V, Sterbet V, Armeanic Al., D. dust, Goriuc S, Gurin C, Railean P., Carnat T, Costachi Gh., Hlipca P., Black A., etc.);

- *The principle* of legality (Costachi Gh., Railean P., Ionescu S., Les I, Deleanu I., etc.);

- *The status of the judge and his conduct* (Rardincu C.G., Negulescu P., Preda M., Stechza G., Petrescu R.N., Prisacaru V.I., Santai I., Novac T, Popa I., Capcelea V., Danilet C., Croitor E., Popovici T, Radulescu A., Ciuca A., Costachi Gh., Iacub I, Lefebvre B, Freyburger G, Volansky A.Al., Canivet G., etc.);

- *Immunity of the judge as a fundamental guarantee of his independence* (Costachi Gh., Railan P., Danilet C., Radulescu a, Keznetova I.S.), Terenhin V.A., Sumenkov S.IU., Kutaphin O.E., Maliko A.V, Sopelieva NV, Koneva N.S., etc.).

Generalizing, it is reiterated that the main aspects highlighted by the doctrine of the legality and efficiency of the judiciary (outlined above) have served as an important benchmark for the design and implementation of doctoral research. Moreover, the theses and ideas promoted by researchers have aroused a strong interest in the direct issue of the legal liability of judges and their role in ensuring the legality and efficiency of the judiciary, in this way, by making (motivating) our proposal for doctoral research to deepen this issue in four important areas: disciplinary responsibility, criminal liability, civil liability and constitutional liability of judges.

In order to assess the degree of academic research on the question of the legality and efficiency of the judiciary, in this section, a separate attention is given to the presentation of the principles governing the organization and functioning of the judiciary, with particular emphasis on the principle of legality and efficiency.

Initially, the principles of the three 'e' – *efficiency, effectiveness, economy* and the three 'I' – *independence, impartiality, integrity are briefly outlined [*26, p. 20), emphasizing that their implementation and implementation is an important condition for the substantial efficiency of the judicial power, the reduction of the costs incurred by society for the work of the justice system, and the strengthening of the trust of the citizen in the act of justice [11, p. 188).

The focus is on the principles of integrity (which essentially has the value of a standard of conduct) and legality. After a brief statement of the regulatory framework which expressly enshrines the principle of legality, it appears that, on a procedural basis, the judge has a duty to ensure that the provisions of the law on the realization of the rights and the fulfillment of the obligations of the parties to the trial are respected [27, p. 139). Therefore, the judge is not only obliged to comply with the law

as a Member of a judicial body, but in its important capacity, he is obliged to enforce the law and other procedural subjects, and to ensure compliance with the legal provisions concerning 'the fulfillment of the rights and the fulfillment of the obligations of the parties to the trial' [33, p. 58).

On the basis of the above, it is concluded that *legality* is both a feature of the judicial power and a fundamental requirement of the work of the courts. The principle of legality is a framework principle that incorporates all other principles by which the court proceedings are conducted [15, p. 22). In a broader sense, the observance of the law by the court not only presuppresses the proper application of the rules of procedural law, but also the legal character of the court, its independence, the impartiality of the judges and their submission to the law [5, p. 413).

Apart from the legal obligation to respect the law in the work done and to enforce it by all those involved in justice, it is stressed that it should not be forgotten that judges are also people (equally vulnerable to temptation), they are prone to committing misconduct, which, frankly, goes against their legal and social status substantially. Moreover, in the context of such conduct, the judge practically undermines the image and prestige of the justice he represents and seriously attacks its effectiveness. The only measure to restore and maintain the image and efficiency of the justice system (despite all attempts to stir them up) [11, p. 193; 10, p. 136), consists of strengthening the institution *of judicial liability of judges.*

Generalizing on the question of the legality and efficiency of the judiciary, it is stressed that *legality* is essentially the foundation and mission of the judiciary. In the absence of compliance with and enforcement of this principle, such a power is practically inconceivable in a rule of law. Equally *effective* is a fundamental principle for the work of the judiciary, marking its effective positive impact on the defense and respect for human rights and interests. In order to ensure and promote both principles, two important conditions are absolutely essential: A high level of professional judicial culture for judges and a strengthened institution of legal liability for these legal subjects. Both conditions are intended to outline certain requirements, standards, limits in the work of the judge on whom its legality and efficiency depend substantially.

Second section *(1.2. The doctrinary interest in the magistrates' liability*), is devoted to an X-ray of the degree of doctrinal research into the matter of magistrates' liability, as are the authors who contributed to the study of the following aspects:

- *The judges' liability as part of their legal status* (Alexe C., Black A., Novac T., Ciobanu V. M., Mocanu-Suciu A., Ivanovici I, Danilet C, Courtex J, Gwenola K, Joly-Hurard J, Baltag D, Ghernaja G.-C., Porof Al., Kleandrov M.I., Kolesnikov E.V., Selezneva MI, Sapunova M., etc.),

- *The disciplinary liability of the judge* (Apostol Tofan D, Trailescu A., Gutuleac V., Mocanu-Suciu A., Ghimpu S., Stefanescu I.T., Beligradeanu S., Mohanu Gh., Boisteanu E, Romandas N., Tulea Al., Garbulet I, Cojocaru V., Grecu P., Hriptievschi N., Manea T, Marian D., Aduskin IU., Jidkov V., Tuganov IU.N., etc.),

- *Constitutional liability of the judge* (Costachi Gh., Muruianu I., Micu V., Vinogradov, V.A.), Kondrasev A.A., Mankevich I, Konovalov P.V., etc.),

- *Criminal liability of the judge (*Bogdan S., Serban D.A., Zlati G., Boroi Al., Brinza S., Stay V., Bulai C., Diaconescu G., Duvac C, Dongoroz V., Mitrache C, Toader T, Garbulet I, Diaconescu H, Teodorescu NG, Pascu I, Chirila a, Dragomir F, Crisu-Ciocinth a, Dumbrava H., Danilet C, Cigan D, Oprea M, Ulianovschi Gh, etc.);

- *Civil liability of the judge* (Boila L.R., Lupan E, Pop L., Popa I.F., Vidu S.I., Asanica A., Ionescu C., IoSoft R, Les I, Petcu R. I., Petre I., Pea O., Iacub I., etc.).

Finally, it is concluded that, despite the importance of the subject, but also of its timeliness, the legal doctrine, in recent times, while emphasizing the pblemby of *legality* as a whole, less attention is paid to circumscribing this principle of judicial activity, which of course represents a serious gap in this area.

Even more serious is that the very issue of *the liability of judges*, as guarantor of the legality and efficiency of the judiciary, is only superficial, fragmented and tangential in the academic world.

Chapter II, with the general ***conduct of the judge: Between legality and liability,*** it is an introductory section in the matter under investigation, in which it is intended to explain the usefulness of the investigation into the question of the kidnapping of judges based on the need to ensure the legality and efficiency of the judiciary. The structural chapter consists of three sections depending *on the three important topics raised: The judge as a civil servant with special status (section 2.1.), the conduct of the judge: Between good faith, bad faith and gross negligence (section 2.2.) and immunity and liability in the context of guaranteeing the independence of the judge (section 2.3.).*

First section *(2.1. The judge, a civil servant with special status*), was devoted to the question of the legal status of the judge, starting from the fact that the judge's liability is a constituent element of his status.

After clarifying the notion of *status* and the essay of the status of civil servant, it was attempted to prove that, despite the legal regulations in this field in Romania, the position of magistrate/judge is a function of public dignity (as expressly stipulated in the law of the Republic of Moldova).

The view that it is right to deny the equivalence of judges/magistrates to ordinary civil servants, especially on the basis of their constitutional role. At the same time, it would not be fair either to exclude them from the category of public officials, considered as civil servants with special status, in particular for the following reasons [15, p. 44–45]:

- The Commission notes that the Polish authorities have not provided any evidence that the Constitutional Tribunal has not been able to rule on the basis of the judgments of the Constitutional Tribunal [24]. 182), they are agents of the state, ensuring the functioning *of its judicial public service*, institutionalized through the court system;

- public functions in the state are performed either by *civil servants* or *by public officials*, and there is another category of state civil servants (at least officially recognized);

- identification of magistrates as a distinct category of state civil servants, along with civil servants and public officials, it can distort the principle of equal powers in the state and recognize that the judicial power is a special one in relation to the other two powers - legislative and executive - the representatives of which are both civil servants and public officials.

In conclusion, it is argued that [22, p. 45) *the judges* are *civil servants*, who have *special legal status* (status of public dignitary), determined by the fact that they have a public dignity function and are part of a separate public service, the task of which is to carry out justice in society in a lawful and efficient manner. The specificity of their special legal status and of the public service provided to society determines the specific conduct that judges must have and the legal liability to which they are liable in the event of a breach of the law.

Section 2 of Chapter *2.2. The conduct of the judge: Between good faith, bad faith and gross negligence) develops a number of important aspects* of the conduct of the judge, such as good faith as standard, bad faith and gross negligence as forms of fault admitted by the judge to his work.

As far as good faith is concerned, it is appreciated from the very beginning that it is spread in practically all legal branches, even having constitutional status. On the basis of this, it is concluded that the performance of the function in *good faith* constitutes a constitutional obligation for judges as representatives of the judicial power in the State as well. However, this obligation is, unfortunately, not developed in the legislation regulating the activity of the magistrates, and the task of making it concrete is thus incumbent upon the doctrine [6, pp.] 102). At present, the necessity and timeliness of this practical issue is undeniable especially in the context of the empowerment of the judiciary as an important factor in strengthening the rule of law [7, p. 48-49).

After a brief clarification of the Latin origin of *good faith* and its semantic development, it is therefore stressed that although this is a concept which is difficult to define, it is now increasingly described as a white rule with variable content, a framework concept, but which enables the efficient and correct execution of justice and makes the judge fully diligently apply the principle of fairness in justice. In conclusion, it is considered that [6, p. 101–105; 15, p. 57), given the particular relevance of good faith *to* the efficiency of justice, it would be appropriate that it be expressly enshrined in the law as a basic principle of the judge's activity.

Attention is then drawn to the fact that *bad faith* and *gross negligence* are forms of guilt which attract disciplinary responsibility for judges. This is why they are regulated at the level of organic law in both Romania and the Republic of Moldavia, just as with some differences. Thus, *the Law of the Republic of Moldova No 544/1995 [*30] provides in Article 21(2): '[a]nullity or amendment of the judgment shall give rise to liability under the terms of Law No 178 of 25 July 2014 on the disciplinary liability of judges if the Judge giving it infringed the law either intentionally or as a result of serious negligence'. In addition, Article 36(11) of *the Law of the Republic of Moldova No 178/2014 [*29] specifies: '[c]disciplinary action may be established against disciplinary action and may impose disciplinary sanctions on judges in office, judges who have resigned, chairpersons, vice-presidents of courts only if they find that the imputed act has been committed intentionally or through gross negligence.';

Under these legal provisions, as well as the normative text in the whole of the two laws cited, it is noted that the Moldovan legislature expressly conditioned the disciplinary liability of judges to commit misconduct on account of *gross negligence,* but expressly did not specify anything about bad faith, leaving it merely to be inferred from *the intention* it prescribes as a form of guilt [15, p. 60).

In turn, the Romanian legislator briefly establishes in Article 99 (t) of *Law No 303/2004 [*31] that it constitutes disciplinary misconduct 'acting in bad faith or with serious negligence if the act does not meet the constituent elements of a criminal offense'. Moreover, the content of Article 991 also sets out some explanations to this effect: "(1) there is *bad faith* when the judge (…) knowingly infringes the rules of substantive law or of the proceedings, pursuing or accepting the harm of a person. (2) there is *serious negligence* where the judge (…) disregards, on a serious, unquestionable and unexcusable basis, the rules of substantive or procedural law." It can be easily noticed by a simple look at these legal regulations that in Romanian legislation *bad faith* and *gross negligence* have a much more pronounced legal value.

After a brief development of the contents of each category, it is concluded that:

- *the bad faith* shown by the judge in the context of the implementation of justice implies the conscious distortion of the law and the wrong application of the law. In this way, *the judge's ill-faith* can be sanctioned, depending on certain circumstances, both disciplinary and criminal;

- *serious negligence*, in turn, implies a serious breach of the diligence which the judge had to have in applying clear and obvious judgments to anyone; finally, it also leads to misapplication of legal rules, which is the basis for attracting disciplinary liability to the judge, and only in some cases to criminal liability;

- both are forms of guilt which also involve the civil liability of the judge, in the case of state backsliding proceedings, which is directly responsible for the damage caused to individuals by legal errors.

In all cases, evidence of the misconduct of a judge should be provided to give a fair assessment of the facts committed and to establish the concrete and correct penalty measures. At the same time, it is imperative to guarantee that judges are held liable for any manifestation of bad faith and gross negligence, since only by penalizing bad faith and serious negligence will it be possible to ensure that justice is carried out in good faith in a rule of law under the most diligent conditions.

Section 3 of Chapter *2.3. Immunity and liability in the context of guaranteeing the independence of the judge*), directly concerns the question of the judge's liability and immunity as a guarantee of his independence.

The section starts with an analysis of the independence of the judge as a constituent of his legal status. In the context, it reiterates that "the independence of justice is not a personal privilege or prerogative of every judge. On the contrary, it is the responsibility imposed on every judge, who allows him to solve a case honestly and impartially, based on law and evidence, without pressure or external influences and without fear of interference. The essence of the principle of the independence of justice is the full freedom of the judge to judge and settle cases brought to court; no one from outside – neither the government, nor the pressure groups, nor any individual or even any other judge – should interfere or try to interfere in the way a judge leads a case and makes a decision' [5, p. 426). From this point is quite clear the special value of the independence of the judge for the implementation of justice, as well as the need for the existence of genuine safeguards to ensure it [9, p. 49; 19, p. 104).

In particular, the close link between the independence of judges, their liability and immunity from justice is highlighted [9, p. 51). In other words, in anticipation, it is specified that *immunity from proceedings* is an important requirement to be respected if the judge is held *liable* in order to guarantee and protect his independence.

In essence, immunity is a special privilege, the main social purpose of which is to guarantee the protection of special subjects against unjustified (illegal) attacks, their independence and the exercise of their social and state functions. The State, in order to properly achieve its powers, is co-interested in establishing immunity as a necessary element of the legal status of certain subjects of law. Such an interactivity is more than justified with regard to judges, especially because of the social importance of justice, the need to strengthen its independence in order to ensure legal and social fairness in society.

As far as immunity is concerned, this variety of legal immunity is a complex institution, The Commission also notes that, in the context of the new Law on the Constitutional Tribunal, the Law on the Supreme Court of the Republic of Justice of 42 December 1972, the Law on the Supreme Court of Justice, the Law on the Supreme Court of Justice, the Law on the Supreme Court of Justice, the Law on the Supreme Court of Justice, the Law on the Supreme Court of Justice, the 7).

In conclusion, it is stressed that [9, p. 52; 19, p. 111) since *immunity* is a guarantee of the independence of judges, it is necessary in countries where the independence of justice requires consolidation, i.e. in the young democracies. While the level of democracy sufficiently guarantees the real and effective independence of justice, *the immunity* of the judge becomes superfluous, as the principle of equality for all before the law and justice is already the predominant one. That is certainly the ideal for which we must aim.

At the same time, it is mentioned that the immunity of judges is not absolute and should not be treated as an insurmountable barrier. The law does not absolve these representatives of power, but merely sets out more complicated procedures in this respect. This is justified by the fact that immunity of judges is not a personal privilege of the citizen employed as judge, but a means of legal protection of his professional activity [40, p. 23), a means of protecting public interests and, above all, the interests of justice.

The efficiency of judicial power therefore depends substantially on ensuring a balance between the immunity of judges and their legal liability, as as much power (authority) is granted to them to ensure legality and justice within the State, the mechanism of making the infringement liable must be as efficient as it is [36, p. 440). From this point of view, it is concluded that the issue of judges' liability at the present stage is a particularly important and current one, which deserves an appropriate attention both from the legislator and the legal practitioner and from the academic world.

The latter has a crucial role to play in providing scientific basis for the legal framework governing the legal liability of the judge in order to ensure the right balance between the specific legal status of the judge and to counter any deviation from the provisions of the law in order to ensure the legality and effectiveness of the judiciary in the rule of law.

Chapter III, the ***disciplinary liability of the judge: Grounds, sanctions and special features,*** is devoted in particular to the study of three important subjects: the definition, features and legal seat of the judge's disciplinary liability *(section 3.1),* disciplinary misconduct as a basis for the disciplinary liability of the judge *(section 3.2)* and disciplinary sanctions applicable to the judge *(section 3.3),* concluding with a summary and generalization compartment (*section 3.4).*

First section *(3.1. The definition, features and legal seat of the Judge's disciplinary liability) contains an* introductory approach of the judge's institution of disciplinary responsibility, building on the theory of disciplinary liability in labor law and administrative law.

After identifying the particularities which distinguish the disciplinary liability of the magistrates from the liability of administrative and labor law, a review of the legal seat of this institution is carried out, both at international and national level (of both States). It is concluded from the provisions of all relevant international acts in this field that it is essential in disciplinary accountability for judges to define the disciplinary misconduct itself and to lay down strict and detailed rules for disciplinary action by the holder of such action, the court applying them and the sanctions that may be applied for permissible disciplinary offenses [14, p. 20; 13, p. 178).

At internal level, of course, the juridical headquarters at the disciplinary responsibility of the judges in Romania and the Republic of Moldavia are the laws of the two States. At the same time, the opinion of the researchers, who claim that the law and *the oath* before the judge begins to perform his duties, are the source of judicial discipline. Thus, together with the law, the source of judicial discipline is also *the judge's oath*, as it implies a free assumption by the judge of the obligations contained in that solemn act [4, p. 271).

Starting from these moments, the doctrine argued that the judge had constitutional responsibility for the act of breaking the oath. Looking at this version, it is concluded that several disciplinary offenses governed by the laws of Romania and the Republic of Moldova can be covered by the expression "breach of oath and duty of office", this is clearly and precisely the essence of the infringement admitted by the subjects and which is inevitably to be sanctioned by dismissal. In this case, the offenses allowed/committed by judges may be qualified as *constitutional offenses* and the sanction imposed – as *a constitutional sanction*. In this respect, it is argued [20, p. 18; 15, p. 119) that the constitutional liability of judges, *de iure* is not established, but *de facto* can be certified and inferred from the relevant legal rules and clearly distinct from their disciplinary liability.

Section 2 (*3.2. Disciplinary misconduct as a basis for the disciplinary liability of the judge)* is directly devoted to the examination of disciplinary misconduct which may be committed by the judges, governed by the law of the two States. After they have been exhibited, attention is drawn to the way in which they are regulated, while supporting the view that it is necessary and desirable that disciplinary misconduct be exposed restrictively in the content of the law, but at the same time they must be well in line with the obligations of the judge laid down by law (not only by the framework law), but also by the procedural law) [14, p. 20; 13, p. 180).

Taking into account the experience of other States in this area, it is assessed that the advantage of a comprehensive list of disciplinary misconduct lies both in the predictability of the law enforcement and in preventing the abuse of interpretation by the relevant bodies. On the other hand, the disadvantage of such an approach is seen in the possibility of facts that cannot be classified in one of the legal deviations. Consequently, it is considered that such a disadvantage could be excluded if

the legislator formulated the components of disciplinary misconduct in close cooperation with the representatives of the judiciary (in particular, the Superior Council of Magistracy) and on the basis of the established case-law of the disciplinary College of magistrates [15, p. 140).

Another issue addressed in this section is the classification of disciplinary misconduct. After several criteria for their classification, as documented in the literature, the legal classification of disciplinary misconduct for judges according to their severity is found necessary. In the absence of such a benchmark, it is assumed that the subjects competent in disciplinary matters have too wide a margin of discretion, which accentuates the vulnerability of the mechanism to ensure the legality of the disciplinary liability of judges [15, p. 148).

The focus is then on analyzing the elements of the disciplinary misconduct component in order to clarify the particularities that characterize them. Finally, it is stressed that in order to be able to hold a disciplinary offense to a judge, it is necessary to establish whether its constituent elements, the subject, the objective and the subjective side are met. In the absence of one of these elements, disciplinary misconduct shall not subsist nor be liable to disciplinary action on the part of the magistrate. On the other hand, given that many of the disciplinary infringements governed by the law comprise several ways or hypotheses of comitology, each of which has different admissibility conditions, where a disciplinary misconduct is actually analyzed, the assumption and the manner in which it was committed must be clearly indicated.

One final point, developed in this section, concerns cases that remove the liability of judges to disciplinary action. The investigators said that the two States did not explicitly mention a list in this case, but they claimed that the cases governed by the penal law would be applicable. However, an exception is made to this effect - *the presplit of disciplinary liability* - this is the only case governed by the laws of the two States.

Last section of chapter (*3.3. Disciplinary sanctions applicable to the judge),* shall include an analysis of the disciplinary sanctions to which the judges may be liable.

After a brief presentation of (and not only) regulated disciplinary sanctions in the two States and a comparison of them, the number of penalties regulated in the legislation of the Republic of Moldova is the lowest, this does not allow for a proportional dosage of the disciplinary offenses that may be committed by the magistrates [15, p. 180). In this connection, it has been proposed to take over the model from Romania, in particular to regulate a new sanction – demotion in a professional grade.

Further, after a broad description of each disciplinary sanction, regulated in the two States, as well as an assessment of the frequency of their practical application (based on the annual CSM reports), some sanctions (both in Romania and in the Republic of Moldova) have been found to be very rarely applied in practice. This moment shows that for most disciplinary misconduct by judges some and the same sanctions are applied, which precludes their proportionality.

In conclusion, it is noted that the full and appropriate legislative provision of disciplinary liability for judges deserves special attention both from the professional and the legislator in both legal systems in order to optimize it [13, p. 185–186; 21, p. 143-144). This solution is particularly necessary from the point of view that an effective mechanism is needed to make judges liable, which must be irreproachable [39, p. 15; 38, p. 16), i.e. the fact that the concrete misconduct of judges must be demonstrated, the guilt in committing it – confirmed, and the penalty must be fair (right, just), adequate and proportionate.

Chapter IV, with the general ***criminal liability of the judge: Grounds and special features of application,*** contains a detailed analysis focusing on the following issues: preliminary considerations

on the criminal liability of the judge *(section 4.1.),* the criminal liability of the judge for service and corruption offenses (*section 4.2.*) and the criminal liability of the judge for offenses against justice (*section 4.3.),* concluding with a summary and generalization compartment (*section 4.4.).*

The chapter starts with some preliminary considerations on the criminal liability of the judge (*section 4.1.*), with the main focus being on the pizzas where the judge is liable to criminal liability and the issue of his/her immunity as an important guarantee of functional independence.

In the first instance, the Constitutional Court itself distinguishes between the criminal liability of the judge for acts committed in the exercise of his office and the criminal liability arising in the event of acts not interfering with the performance of the office of judge [25, par. 22). Beyond this delimitation, the following arguments are put forward to identify three ippostases in which the criminal liability of the judge may arise, namely [18, p. 90; 17, p. 4-5; 15, p. 214): criminal liability as a natural person (general subject); criminal liability as a civil servant (qualified subject); criminal liability as judge (special qualified subject). Such a distinction is considered to be very important, especially from the perspective of immunity from justice, which can only operate if the judge commits offenses in his capacity as a magistrate and not as a civil servant, or simply a citizen.

In the same line of thought, the study is further focused on the significance of immunity and its role in the process of attracting the judge to criminal liability. At the beginning, it is mentioned that Romanian legislation does not expressly establish the regime of judge inviolability, as opposed to the legislation of the Republic of Moldavia.

On the basis of the provisions of *the Romanian Law No 317/2004* [32], which governs the procedural aspects of the process of bringing the judge to criminal liability, some key moments of this trial are deducted, as follows [15, p. 218): Starting prosecution against judges in Romania falls within the competence of the prosecution body; The CSM shall be informed of the criminal proceedings before the judge within a reasonable time; The enforcement of preventive measures (search, detention, pre-trial detention or home arrest) toward judges is done with the approval of the CSM's judges' section; Search and detention can only be carried out without the police being in the event of a flagrant crime; The President of the Supreme Court of Justice shall be appointed by the President of the Constitutional Tribunal on the basis of a decision taken by the President of the Constitutional Tribunal on the basis of a decision taken by the President of the Tribunal. The department shall take a decision immediately after receipt of the referral; In the case of applications for a declaration of enforceability of preventive measures vis-à-vis judges, the Section shall act as a court.

The provisions of the legislation of the Republic of Moldova (in particular: *Law No 544/1995 and Law No 947/1996*) are also analyzed in the comparative plan, in order to finally find that different regimes are established in the two States regarding the bringing of criminal proceedings against judges, outlined in the following moments [15, p. 220–221]:

- Starting prosecution against judges in the Republic of Moldova does not fall within the competence of the prosecution body (as in Romania), but within the competence of the Attorney General or first Deputy, and in its absence by a deputy on the basis of the order issued by the General Prosecutor;

- The bringing into motion of criminal proceedings against judges of the Republic of Moldova is not only brought to the notice of the CSM within a reasonable time, but is ordered with its consent, which is not necessary only in the case of the Commission of the offenses specified in Articles 243, 324, 326 and 3302 of *the Moldovan Criminal Code,* as well as in the case of flagrant offenses;

- The enforcement of preventive measures against the judges of the Republic of Moldova (search, detention, arrest and forced return), as in Romania, is done with the consent of CSM;

- all legal proceedings concerning the judge, except in cases of gross crime, may be carried out only after an order to prosecute has been issued;

- the CSM agreement in the Republic of Moldova for the trial proceedings against the judge (search, detention, arrest and forced return) is not necessary in case of a flagrant crime, whereas in Romania under such circumstances only search and detention can be applied;

- The proposal to start prosecution, detention, forced arrest, arrest or search of the judge is examined by the CSM of the Republic of Moldova immediately, but no later than 5 working days, while in Romania the Department is obliged to take a decision immediately;

- The decisions by which the CSM of the Republic of Moldova sets out its consent or disagreement to prosecution must be reasoned and published on the official CSM web page, with anonymisation of data on the identity of the judge (In Romania the law specifies only that the section meetings in such cases are not public);

- Finally, if in Romania, in the case of applications for a declaration of consent to the application of preventive measures to judges, the CSM section for judges acts as a court, Then in the Republic of Moldova the explicit law stipulates that in such cases the CSM examines the Prosecutor General's proposal only in the respect of the conditions or circumstances set out in the Code of Criminal procedure for order to order the prosecution, detention, forced return, arrest or search of the judge, without arrogating the powers of a court.

Starting from the fact that the agreement given by the CSM to prosecute or enforce judicial measures against judges is described by the Constitutional Court of the Republic of Moldova as 'decisions to waive or not waive the immunity of the judge', the question of *constitutional liability* of the magistrates is further reiterated, as the "waiver of immunity" in the doctrine is considered to be a measure of *constitutional accountability [*43, p. 7).

After presenting some special features of the removal of parliamentary immunity (as attested in the Moldovan doctrine), it is noted that it is necessary to reflect more deeply on the moment when the waiver of immunity for judges is necessary and welcomed: At the stage of initiating criminal prosecution (as in the case of the Republic of Moldova), only in case of application of criminal procedural measures (as in the case of Romania), or at the stage when the case is brought to court (as in the case of Moldovan MEPs). After a separate analysis of each case, starting from the essence and purpose of the legal immunity, it is finally inferred that the most vulnerable judge is at the stage of the prosecution, which also justifies the intervention of CSM as guarantor of its independence, by granting the waiver of his immunity. At the same time, CSM's intervention at this stage practically excludes its possible interference in the act of justice [23, p. 43).

Section 2 of Chapter *4.2. The criminal liability of the judge for service and corruption offenses*) is appropriately divided into three sub-sections: Liability for service offenses (*subsection 4.2.1.)* conflict of interest as a basis for the criminal liability of the judge (*subsection 4.2.2.)* and liability for corruption offenses (*subsection 4.2.3.).* The aim is to shape these two cases of criminal liability of judges in general and to clarify possible regulatory and interpretation issues.

Subsection I (*4.2.1. The criminal liability of judges for service offenses) starts with a review* of the service crimes governed by the criminal law in Romania (number 13) and in the Republic of Moldova (number 9), for which judges are also liable. On the basis of the frequency of these offenses, as noted by legal practice, the following is proposed to analyze more in detail only some of them: Offenses of *abuse of service* and *negligence in service* (in Romania) and offenses of *abuse of power or abuse of service, overpower or exceeding of duties* and *negligence in service* (in the Republic of Moldova). As benchmarks for the analysis of these crimes, the legal doctrine, the case law of the constitutional court (of the two States) and of the Supreme courts served.

The law on abuse *of office*, regulated by the Romanian legislature, beyond various individuals, found that the Constitutional Court of Romania assigned the ruling of illegal court rulings to its content. Unlike Romania, in the Republic of Moldova the delivery of illegal court rulings is criminalized separately (in Article 307 of the PR's CP) as a criminal offense against justice. Therefore, it is considered that the criminal offense given in the Republic of Moldova is more correct, as it falls within the scope of the immunity of the law.

As for the offense of *negligence in the service,* it has been found that the criminal law of Romania expressly establishes the form of guilt – guilt (the criminal law of the Republic of Moldova only requires it), while european standards allow judges to be held liable only for acts committed intentionally or through gross negligence. The question therefore arises as to whether *criminal fault* coincides with *serious negligence* (defined by the Romanian legislator), since, under different circumstances, there will be no basis for bringing judges to criminal liability for *negligence in the service.* At the same time, it was found that the Moldovan legislator, even if it makes use of the notion of *gross negligence in the law on the disciplinary liability of judges*, does not define it, which shows a clear gap in the legislation.

Subsection two (*4.2.2. Conflict of interest as a basis for the criminal liability of the judge*) is devoted to the issue of conflict of interest as a basis for the criminal liability of the judge. Obviously, in this case, the judge could be liable for criminal liability as a civil servant.

As a matter of fact, with the justification for the criminalization of such an offense (in Romania since 2006, in the Republic of Moldova since 2017), the criminal component of the two States is generally analyzed. As a result, a few moments are identified which distinguish the institutions in question, while stressing that the criminalization *of conflict of interest* is a welcome one, especially in terms of its preventive impact on the activity of civil servants, including judges. In this respect, the very existence of criminalization is likely to prevent other illegal acts that these subjects might commit, such as abuse of the service, acts of corruption, etc. on the other hand, the criminal punishment of the offense under consideration is likely to significantly strengthen integrity, the impartiality and even independence of the staff, including judges. Starting from this moment, it is considered that such incrimination is also welcome for the Moldovan Republic's legal system, in which until recently the conflict of interest issue has been addressed only at administrative and non-criminal level.

Subsection two (*4.2.3. The judge's responsibility for corruption offenses*) starts with preliminary ruling on corruption, in which the focus is on the very concept of corruption, its essence, the international Regulation, but also on the evolution of the judge's responsibility for the acts of corruption of the oldest times. Separate attention shall be paid to the historical legal acts that have provided for such an institution.

As for corruption offenses, it is found that in Romania, the criminal law provides for four offenses: *Bribery* (Article 289), *bribery* (Article 290), *trading of influence* (Article 291), *buying influence* (Article 292), while the criminal law of the Republic of Moldova provides only three: *Passive corruption* (Article 324); *Active corruption* (Article 325); *Traffic of influence* (Article 326).

At a summary comparative analysis of the components expressed by the legislators of the two States, it is noted that in general these are similar, except for the fact that in the criminal law of the Republic of Moldova the offenses are formulated in both the model and aggravating versions. As far as the Romanian legislator is concerned, this chapter has mostly opted for standard variants of corruption offenses.

At the same time, differences can also be found in the matter of the sanctioning regime of the offenses under consideration. On this basis, it is inferred that the Romanian legislator has almost uniformly assessed the social danger/the harmful character of corruption offenses, by establishing the same sentence (prison from 2 to 7 years) for three of the four offenses, except for the offense of *bribery*, for which he opted for a more severe sanction (prison from 3 to 10 years).

In turn, the Moldovan legislator sets out a more severe sanction regime for corruption offenses (in both the model and the aggravated versions). The severity of the regime is conditioned not only by the length of the prison sentence (which varies according to the regulatory manner of the offenses), but also by the fact that all offenses (except the mitigating version of paragraph 4 of Article 324 of the CP) are punishable by at least two main sentences: Imprisonment and ameda.

Important is that the most severe punishment is provided for *passive corruption* in the aggravating version, included in paragraph 3 of Article 324 - *prison from 7 to 15 years* Moreover, it is precisely the subject of that rule that the judge of passive corruption falls to the extent that the aggravating circumstance in question requires a public dignity officer to commit the offense [15, p. 303).

Section 3 of Chapter *4.3. The criminal liability of the judge for offenses against justice*) is devoted to the most important category of crime, as it is directly linked to the exercise of the judicial function. Its content is structured in two sub-sections.

In subsection 1 (*4.3.1. The Romanian judge's liability for crimes against justice),* in the Romanian criminal law economy, finds that judges (as special active subjects) are liable to criminal liability for the following offenses against the achievement of the justice: *Undermining of the interests of the justice* (Article 277); *abusive investigation* (article 280); *unfair repression* (article 283). That is, these offenses are described briefly in order to clarify the most important features.

Finally, it is concluded that under Romanian criminal law, magistrates as judges are liable for criminal liability for the following deeds [17, p. 8 to 9]:

- *Compromise of the interests of the justice* (by "disclosing without right confidential information on the date, time, place, manner or means by which evidence is to be administered (...), whether it may make criminal proceedings difficult or prevented (...)" or by "[d]vashing, without right, in the case of an application for legal aid, the date on which the application was lodged shall be the date on which the application was lodged.

- *abusive investigation* (expressed by "[i]burdation of promises, threats or violence against a person prosecuted or prosecuted in a criminal case, (...), to make him or her give or fail to make statements, to make false statements or to withdraw his statements" or by "(...) production, falsification or ticking of bad evidence (…)') and

- *unfair repression* (expressed by "[f]able to set criminal proceedings in motion, to take a preventive, non-custodial measure, or to sue a person, knowing that he is innocent (...) or "[r]his arrest or arrest or conviction, knowing he is innocent (...)").

In terms of the degree of injury of these facts, the same conicity remains. Depending on the sanction provided for by criminal law, *compromising the interests of the justice* is the lightest offense (being punishable by a prison term of 3 months to 2 years or a fine, and in its lighter version - from one month to one year or a fine), in the other pole, *the unfair repression (*with a prison sentence of 3 years to 10 years in its aggravated form, and in light form - prison from 3 months to 3 years, in both cases with a ban on the right to hold a certain position) is placed. Within these limits is *the abusive investigation* for which the law is concerned criminal law provides for prison punishment from 2 to 7 years with the ban on the right to hold a certain office

In subsection 2 (*4.3.2. The responsibility of the judge of the Republic of Moldova for crimes against justice),* attention is focused on the criminal law of the Republic of Moldova in the field of crimes against justice. From its economy, it is found that judges are liable to pay criminal charges for the following acts: *Judgment, decision, conclusion or decision contrary to the law* (expressed by "[p]knowingly honouncing a judgment, award, decision or termination contrary to the law by the judge" or by "[a]cealso action: a) relating to the charge of a serious, particularly serious or exceptionally serious criminal offense'); *illegal detention in good knowledge; constraint to make statements* (expressed by '[c]condoning the person, by threat or other unlawful act, to make statements, to conclude a fault

recognition agreement, coercing the expert to make the conclusion or to make the translator in the same way, or the interpreter to make an incorrect translation or interpretation (…), if this does not constitute torture, inhuman or degrading treatment').

In the Republic of Moldova, unlike Romania, the judge is not liable for such acts as: 'disclosure of confidential information, disclosure of evidence or official documents pending final outcome of the case (offenses against the compromising of the interests of the justice) or 'production, falsification or vesting of untrue evidence' (offenses against *which an investigating offense is committed).* It is considered in this respect that, where a judge is likely to commit such acts, it is necessary to criminalize and punish them.

On the other hand, Romanian judges are liable only for coercing *a person prosecuted or tried in a criminal case* (in order to make him give or refuse to make statements, to make false statements or to withdraw his statements), whereas in the Republic of Moldova, the Republic of Moldova, judges are also punishable by criminal law for coercing the person to make statements (which may be part of any judicial process), expert (to make the conclusion), translator and interpreter (to make an incorrect translation or interpretation). According to the logic of the judgment, it is to be assumed that a judge could also impose a witness (why not?). Therefore, while the implementation of the act of justice depends to a large extent on such participants, it is clear that in order to ensure fair and equitable justice, it is necessary to prevent and penalize not only their constraint (for the submission of false/misleading declarations, conclusions, reports, interpretations) from other subjects, but also from the very side of those invested with the power of justice -- that is, *judges*. In this respect, it is proposed that the criminal law of the two States be supplemented accordingly.

A parallel between the sanctions established by the Romanian legislator and those regulated by the Moldovan criminal law (for similar offenses), it is found that the offenses committed by the magistrates in their capacity as judges are generally of a different detrimental nature, with some exceptions. Thus, for acts such as:

- *Coercive determination of persons to submit statements*, a Romanian judge can be punished by prison from 2 to 7 years, while a Moldovan judge - from 2 to 6 years in prison.

- *The arrest of a person, knowing that he is not guilty* (illegally arrested by willful means), a Romanian judge can be punished by prison from 3 to 10 years, while a Moldovan judge is sentenced to prison for up to 3 years

Finally, as regards the analysis and exposure, it is concluded that [18, p. 101-102] that in both law systems, the legislators identified some concrete illegal acts for which they provided for the criminal liability of the magistrates as judges. Taken as a whole, the necessity and usefulness of such incriminations in the conduct of judges can be supported, since they are the ones called upon to carry out justice in the state and thus avoid possible attacks on the part of the magistrates themselves.

Chapter V, entitled *Civil liability as a judge*, contains a detailed study of another form of judicial liability of judges, namely civil liability. Corresponding to the complexity of this issue, the chapter was structured into two sections focusing on some important issues such as: Judicial error as a basis for the civil liability of the judge (*section 5.1.)* and the civil liability of the judge: Concept and legal characters (*section 5.2.),* the chapter ending with the corresponding conclusions and generalizations (*section 5.3.).*

Section one of Chapter *(5.1. The error in law as a basis for the civil liability of the judge), includes an analysis of the miscarriage of justice* as a basis for the civil liability of the judge.

It is initially noted that the problem of compensation for damage caused by illegal judgments or abusive measures has triggered contradictory debates among legal practitioners and practitioners on the basis and special conditions under which civil liability can be incurred for compensation.

In the Romanian legal doctrine, in this chapter three assumptions of civil liability for damages caused by legal errors were outlined [1, p. 217–230; 2, p. 82–89; 28, p. 70-81): the sole liability of the state as guarantor of the legality of the activities of its bodies in the field of justice; the liability of the state with the judge who issued the unlawful solution; personal liability of the heduser.

In the light of these assumptions, it is considered that [8, p. 264-269] for damages caused by legal errors, the state is exclusively responsible as the guarantor of the legality of justice. Judges cannot be responsible for judicial errors, as their remedy is ensured through the hierarchical organization of the judiciary and the functioning of appeals. Moreover, as stated in Romania's constitutional text, magistrates are only responsible for exercising their office in bad faith and gross negligence, that is to say acts which can be judged as determinants of judicial errors.

Beyond this moment, the most disputed issue in the literature concerns the field where the state can be held responsible for judicial errors, and various considerations are presented regarding liability for legal errors admitted in criminal and non-criminal lawsuits. By taking into account their doctrine and legislation in the field, it is noticed that in Romania, state responsibility for misinformation can occur in all types of trials, while in the Republic of Moldavia only in criminal cases. That is to say, it is considered that this state of affairs needs to be changed, as the state must guarantee compensation for damages caused to ceta by judicial errors, regardless of the type of process in which it occurred.

Another point that has been clarified in this section is related to the notion of judicial error, which, on the basis of the above, must be clearly defined in the law. In this respect, we note both the theoretical, practical and tiva difficulty in outlining the notion of judicial error and the particular significance of this moment, especially in defending human rights affected by judicial errors. Hence, the absolute need to continue the theoretical (and other) efforts to define and specify the exact content of the misstatement is upheld, as both the effective protection of human rights depends on the institution in question, and attracting judges to civil liability in a manner that is legal and respectful of their independence.

These moments are of particular significance to the Republic of Moldova, especially given that the institution of civil liability for judicial errors is constitutionally limited to criminal proceedings only, a situation which shows that the state does not guarantee in any way compensation to persons who might be harmed by legal errors in extra-judicial matters by judges acting in bad faith or gross negligence.

In section 2 of Chapter 5.2. The civil liability of the judge: Concept and legal characters), the focus is on identifying the legal characteristics of the civil liability of judges.

First of all, it is noted that the question of *civil liability* of magistrates (34, p. 49-56) is one of the most sensitive, often an area of great controversy, but also of the legislator's constant concern. Given the unprecedented scale of the endemic corruption phenomena, which have not bypassed the Romanian judicial system (and the Moldovan one), in the media and in the civil society in Romania (and not only). there is a certain perseverance about the necessity of a more rigorous regulation of the civil liability of magistrates. This is why, in recent times, the Romanian doctrine and not only has brought into the spotlight this complex and coplicate issue of the magistracy [35, p. 82-106).

After a brief overview of the regulatory framework governing the civil liability of judges, the attention is drawn to the legal character of the legal framework, as follows: *The subsidiary nature of the liability; indirect nature; general nature; completeness and subjective character.*

Finally, it is concluded that *the civil liability* of the magistrates means, in concrete terms, the obligation to make good the damage caused to them by the exercise of their duties under certain conditions (causing damage by misappropriation of court due to bad faith and serious negligence).

The specificity of this form of interference lies in the fact that, on the one hand, we are not in the presence of direct liability, and the magistrate cannot be summoned directly by the injured person who can only appeal against the State. On the other hand, the magistrate will answer mediated, based on the state's backsliding action, given the fact that he will prove he is guilty of mischief or gross negligence.

In general, the institution of civil liability of magistrates can be regarded as a fundamental guarantee of the protection of human rights in case of violation by the judicial authority. In this respect, the mechanism for achieving this responsibility must be effective, efficient and balanced in a contemporary democratic society [12, p. 459).

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The thorough comparative research of the issue of the liability of magistrates as a guarantee of the legality and efficiency of the judiciary has allowed us to reach a number of important conclusions and recommendations.

By generalizing on the issue of the conduct of the judge between legality and claims, we draw the following conclusions:

1. Legality is essentially the foundation and mission of the judiciary. In the absence of compliance with and enforcement of this principle, such a power is practically inconceivable in a rule of law. Equally effective is a fundamental principle for the work of the judiciary, marking its effective positive impact on water and respect for human rights and interests. Two important conditions are absolutely essential for the provision and promotion of human rights principles: A high level of professional judicial cooperation between judges and a strengthened institution of legal responsibility for these legal issues. Both conditions are intended to challenge certain requirements, standard, limits in the work of the judge on whom its legality and efficiency depend substantially.

2. As long as the justice system is a public service, organized, provided and carried out by the State, the magistrates are and should be regarded as civil servants (in the sense of public agents/representatives of the State invested with certain powers in the exercise of a separate function of the State) [92, p. 43; 83, p. 36). Furthermore, judges are civil servants, who have special legal status (status of public dignity), determined by the fact that they have a public dignity function and are part of a separate public service, the task of which is to carry out justice in society in a lawful and efficient manner. The specific nature of their special legal status and of the public service provided for society, the specific features of the conduct which judges must have and of the legal liability to which they are liable in the event of a breach of the law [92, p. 45).

3. The performance of the office in good faith is a constitutional obligation and a requirement for judges as representatives of the judicial power. In the event that this obligation is not developed in the legislation governing the activity of magistrates [72, p. 73), it is of the utmost importance that the legislator enshrines it in principle in order to ensure the accountability of the judiciary as an important factor in strengthening the rule of law [102, p. 48-49).

4. *The bad faith shown by the judge in the context of the implementation of justice presubjects the conscious distortion of the law and the wrong application of the law. Awareness shows a direct intent on achieving a particular purpose, which is often harmful. Moreover, bad faith implies the intention to propel harm, coupled with an immoral element, as the judge is aware that he acts against his own belief and that he manipulates the law. In this way, the judge's ill-faith can be sanctioned, depending on certain circumstances, both disciplinary and criminal.*

5. *Serious negligence, in turn, means a serious breach of the diligence which the judge had to demonstrate in applying clear and obvious judgments to anyone. This finally leads to the misapplication*

of the legal norms, including the basis for attracting the judge to disciplinary responsibility and, only in a few cases, to criminal liability.

6. *Bad-faith and gross negligence are forms of guilt which also involve the civil liability of the judge, in the event of a state backsliding action, which is directly responsible for damage caused to individuals by legal errors.*

7. *In all cases, evidence must be given to the forms of guilt with which a judge has acted in order to give a fair assessment of the facts committed and to establish the concrete and correct penalty measures. At the same time, it is absolutely necessary to ensure that the inevitable liability of judges for any manifestation of bad faith and serious negligence is not only ensured by penalizing bad faith and serious negligence in a rule of law under the most diligent conditions.*

8. *As immunity is a guarantee of the independence of judges, it is necesary in countries where the independence of justice requires consolidation, and therefore in the young democrats. While the level of democracy sufficiently guarantees the real and effective independence of justice, the immunity of the judge becomes superfluous, as the principle of equality for all before the law and justice is already the predominant one. That is certainly the ideal for which we must aim.*

9. The efficiency of judicial power depends substantially on ensuring the balance between the immunity of judges and their legal liability, as as much power (authority) is granted to them to ensure legality and justice within the State, the mechanism of making it accountable for breaching must be as effective as it is. From a given perspective, the issue of judges' liability at the present stage is a particularly important and current one, which deserves a commensurate attention both from the legislator and the legal practitioner and from the academic world. The latter has a crucial role to play in providing scientific basis for the legal framework governing the legal liability of the judge in order to ensure the right balance between the specific legal status of the judge and to counter any deviation from the law provisions in the process of ensuring the legality and effectiveness of the judicial power in the rule of law.

The following important connoss are common to the chapter on the disciplinary responsibility of the judge:

1. Starting from the source of the judicial discipline (law and oath taken by the judge when taking office) and the specificity of some disciplinary irregularities and penalties, within the institution of disciplinary liability of the magistrates, regulated in the legislation of Romania and the Republic of Moldova, we identify two forms of legal liability: Disciplinary and disciplinary.

2. In this respect, it is relevant that several disciplinary misconduct, provided for by the law of the two States, relates to "breach of oath" or "failure to comply with the provisions of the law of incompatibilities, restrictions and prohibitions", since it clearly and precisely suggests the essence of the violation, which cannot be reduced solely to judicial discipline. Such offenses allowed/committed by judges should be classified as constitutional offenses and the sanction imposed (which can only be dismissal) – as constitutional. Thus, even if the constitutional liability of judges is not established, it can de facto be certified and deducted from the relevant legal rules and is clearly distinct from their disciplinary liability. In essence, disciplinary liability must be understood as having a disciplinary role for the judge, while the target constancy of liability – as a measure to terminate the 'term of office of judge'.

Recommendations:

1. In order to strengthen the disciplinary and constitutional accountability of judges, we consider it absolutely necessary to have them explicitly defined in the legislation of the two States, with the practical limitation of disciplinary misconduct and constitutional offenses, as well as of the applicable penalties.

2. In addition, in order to strengthen the disciplinary liability of judges, we consider the following measures necessary and welcome:

First, the limited exposure in the content of the law of disciplinary misconduct which, at the same time, must be well linked to the obligations of the judge provided for by the law (not only by the framework law, but also by the procedural law) [82, p. 20; 81, p. 180). Obviously, the advantage of a comprehensive list of disciplinary misconduct lies both in the foresight of law enforcement and in the prevention of interpretation abuses by the relevant bodies. On the other hand, we have to admit that the disadvantage of such an approach lies in the possibility of facts that cannot be classified in one of the legal questions. In our view, such a disadvantage could be excluded if the legislator were to formulate the components of disciplinary misconduct in collaboration The President of the Supreme Court of Justice (CSM) is a Member of the Supreme Court of Justice (CSU), which is a Member of the Supreme Court of Justice (CSU), a Member of the Supreme Court of Justice (CSU) and a Member of the Supreme Court of Justice 83 140). On the other hand, given that the status of the judge will be sufficiently clear in the matter of obligations, prohibitions and restrictions, the identification and formulation of disciplinary misconduct will not present any differential cult to the legislator [83, p. 141).

Secondly, an explicit legal classification of disciplinary misconduct according to their severity would be welcome, with an indication of the disciplinary penalty applicable to each category. This would avoid abuse of the qualification of misconduct and identify the disciplinary penalty to be ordered.

Thirdly, the law needs to stress the condition that the obligation to hold judges liable to disciplinary action is only possible if the misconduct is committed/admitted with intent or gross negligence (requirement in line with European standards in this area). In this connection, the Moldovan legislator is to define in law the notion of *gross negligence.*

Fourthly, in the Republic of Moldova, starting from the high number of disciplinary offenses expressly regulated by law, as well as the various forms of committing such offenses, we welcome the completion of the range of disciplinary sanctions applicable to judges (at present there are four), this would allow them to be measured honestly against the facts committed (compliance with the principle of proportionality) [83] 180). *A welcome sanction in this respect would be the downgrading in a professional grade* (a recent sanction introduced in Romania's legislation).

Fifthly, in Romania, the double Regulation of disciplinary misconduct and applicable sanctions, in *Law No 161/2003* and *Law No 303/2004*, it is likely to create only legal collisions and confusion in the process of qualifying the acts committed by judges and identifying the disciplinary penalty to be imposed. The optima solution in this case would be the concentration of the disciplinary matter exclusively in the Framework Law (*Law No 303/2004)*, and *Law No 161/2003 would* only lay down rules of investigation (referring to the Framework Law in the field) [83, p. 194-195).

Finally, the implementation of the proposals presented is also justified by the fact that both in Romania and in the Republic of Moldova, at the moment, the responsibility for individualizing the disciplinary penalty imposed on judges for disciplinary misconduct rests with the competent subjects (in the absence of explicit legal regulations), this is a moment of vulnerability for judges as subjects of disciplinary responsibility.

In the chapter on the criminal liability of the judge we are generalizing the following important conclusions:

1. Criminal liability of the judge is possible in three stages (86, p. 90; 85, p. 4-5; 83, p. 214): criminal liability as a natural person (general subject) – for the commission of any offense charged by criminal law; criminal liability as a public official (qualified subject) — for acts prohibited by criminal law committed in or in connection with the performance of service duties; criminal liability as a judge (specifically qualified subject) — for criminal offenses committed in the exercise of the function of a magistrate.

2. *The criminal responsibility of the magistrate as a civil servant* is the circus-written for committing service and corruption offenses. A distinct context focus deserves the crime of *abuse of office* and *negligence in the service.*

As a result of the comparative analysis we have found that in the Republic of Moldova the judge is liable for criminal liability for committing such chevicful crimes, such as *abuse of power* and *excessive power,* in their aggravated version, whereas in Romania, the judge shall be liable to criminal liability only for *abuse of office.*

The judge may be held liable for *abuse of the service*, only if he intentionally/subjectively in the exercise of his/her functional powers (in the case he/she is investigating or judges) fails to fulfill an act or fulfills an act/element which is objective/in breach of the law (the material or procedural rules apply to balls), thereby causing damage to or injury to the rights or interests of natural and legal persons/causal link. In the case of Romania, the Constitutional Court found that the term *"act"*, in the contents of the offense of *abuse of office*, also covered *the pro-ruling of a court ruling.* Under such circumstances, *abuse in office* (committed by judges) is theoretically turned from a service offense, into a criminal offense against justice (according to the model of the criminal law in the Republic of Moldova).

In the Republic of Moldova, *the establishment of an illegal court decision* is an offender. Separate statement (Article 307 of the PR), falling within the category of offenses against justice. This moment is important in terms of the incidence of immunity of the courts, which, as is known, can only be invoked if the judge is accused of coerting an offense connected with the exercise of his judicial office.

In Romania, the judge can be held liable for *a court ruling* (the act circumscribed offender of abuse of office) not only if he acted with intent or bad faith, but if he acted in this way to cause damage or injury. In the Republic of Moldova, the judge can be called to criminal prosecution only for *the knowingly pronouncement of an illegal court ruling (decision-making, decisions, conclusion).*

Recommendation: Regarding the recent increasing insistence in Moldovan spa on the need to discriminalize the crime, as it would pay attention to the status of the judge, we believe that a possible implementation of this proposal would implicitly result in the crime of abuse of power being circumscribed (As in the case of Romania), since in essence it will not solve the problem, but will create new confusion. It would therefore be more appropriate if the composition of the offense were to be reconceptualized, in particular, by converting it from a formal one into a material one, with the express specification of the purpose, the consequences sought by the perpetrator (causing damage or a cotton measure). At this point, it could provide a certain guarantee for avoiding arbitrariness and abuse in the process of bringing judges to criminal liability. At the same time, the compo-offense should also be modified in terms of excluding the distinction between making an illegal decision in criminal matters and pronouncing on other matters. In our view, the assessment of the seriousness of such acts must not depend on the extent to which they occur, since it is dangerous and prejudicial to the judgment itself, the danger being the same regardless of the subject matter of the right to which the judge is exposed. Therefore, the legislator must lay down a single criminal penalty for such acts (in which the fine must not be found).

With regard to negligence in the service, we consider it complicated to impute it to a judge, as for the most part, European standards, only allow this subject of law to be held liable if it shows bad faith or gross negligence in the performance of its duties.

Starting from the distinction between fault with provision and fault without provision as forms of criminal guilt and gross negligence in the form of disciplinary guilt, pre-trial and European standards in this area (which require that the individual guilt of judges/in all cases of liability not only criminal/ be established at the level of deliberate intent or gross negligence), we conclude that judges cannot be held liable on-nala for negligence in the service, because the criminal law makes the commission of the offense a fault (which includes ordinary negligence) and not out of gross negligence..

3. *The criminal liability of the magistrate as a judge* is generally circumscribed for committing offenses against the justice system. In the Republic of Moldova, judges are liable for criminal liability for: *Judgment, decision, conclusion or decision contrary to the law; illegal detention in good knowledge; coercion to make decations* as criminal offenses against justice. In addition, unlike Romania, the judge is not liable for any criminal liability for: ‘disclosure of confidential information, disclosure of evidence or official documents pending final outcome of the case (facts circumscribed

in the offense of *compromising the interests of the justice*) or of 'false claims, forgery or misappropriation of evidence' (facts circumscribed in the offense of *abusive investigation*). If a judge is likely to commit such acts, we believe that it is necessary to criminalize and punish them.

On the other hand, Romanian judges are liable only for coercing *a person prosecuted or tried in a criminal case* (in order to make him give or refuse to make statements, make false statements or withdraw his statements), whereas in the Republic of Moldova, the Republic of Moldova, the Republic of Moldova, the Republic of Moldova, the Republic of Moldova, the Republic of Moldova, the Republic of Moldova, judges are also punishable by criminal law for coercing the person to make statements (which may be part of any judicial process), expert (to make the conclusion), translator and interpreter (to make an incorrect translation or interpretation).

Recommendation: Given that the achievement of the act of justice depends largely on such participants, it is clear that in order to ensure fair and equitable justice, it is necessary to prevent and sanction not only the constraint on the part of other pro-Czech subjects, but also from the very side of those invested with the power of justice -- that is, judges. On this point, we propose that the criminal law in Romania be properly supplemented.

4. With regard to the procedure for bringing the judge to criminal liability, we stress that this depends considerably on the immunity of the courts recognized by the law on the treatment of the Magists. Given that the criminal liability of the judge is usually considered to be closely linked to the immunity of the court, this unjustifiably has resulted in the institution losing its status given that it is an absolute one, that is to say, capable of abusing the judge from criminal liability**.**

Starting from the essence and purpose of the immunity of the court (to prevent and avoid the risk of abuse, arbitrary actions, false accusations against the judge by interested persons) and the exclusively functional character of this institution, we believe that it should intervene and protect the independence of the judge only in cases where he is the judge he is suspected of having committed a criminal offense in the performance of his position as a magistrate (that is, in actions against the justice system). In all other cases, the judge cannot be in the shelter of the imunation.

For the reasons given, we are of the opinion that both the Moldovan legislator (which expressly provides for offenses for which immunity cannot be invoked – money laundering / Art. 243 CP/, passive corruption /Art. 324 CP/, traffic of influence / Art. 326 hp/ and illicit enrichment/Art. 3302 CP/) and the one in Romania (which does not expressly provide for anything) are not right, as it would be much more correct and efficient to expressly maintain the offenses for which the judge is protected by immunity. Only in such a version could misinterpretations of the law on the cases of the waiver of immunity and the general perception of the absolute character of this institution be excluded.

Recommendation: Starting from the above, we believe that the law must stipulate expressly the cases in which the CSM's consent/approval is required regarding the removal of imu-nation, which would specify the scope of the immunity.

On the procedural side, it is important to address the issue of when the waiver of immunity is unfair and welcome: At the stage of criminal prosecution (as in the case of the Republic of Moldova), only in the case of application of criminal procedural measures – detention, search, arrest and arrest at home (as in the case of Romania), or at the stage of referral to court (as in the case of Moldavian deputies).

Starting from the fact that the judge does not exercise his/her office under (temporary) terms of office, the failure to give up his/her immunity at the stage of referral to court would be tantamount to the graduation of the judge of criminal liability (which is avoided by the criminal law in both States).

The waiver of immunity only for the application of criminal procedural measures is essentially burdened by two shortcomings: First, such a theoretical version implies that immunity must be lifted whenever procedural measures are requested (in the same trial); And secondly, the competence of the CSM to waive the immunity of the judge for the enforcement of criminal trial measures (which according

to the law can be ordered by the judicial body – the judge of rights and freedoms, the judge of the pre-trial chamber or the court) represents an interference in the activity of the justice (the very disposition of these measures by the judicial body should, of its own motion, guarantee the independence of the judge as a suspect**).**

As for making prosecution against judges subject to CSM approval (a situation specific to the Republic of Moldova only), this implies that once you have accepted the waiver of immunity from prosecution, then it is no longer required for the prosecution. In essence, this moment makes sense, as immunity can and should only be lifted once in one and the same process. In this respect, it lacks logic to regulate the legislature of the Republic of Moldova, which presees the possibility of waiving the immunity of the judge both for bringing prosecution and for applying procedural measures [93, p. 44).

In our opinion, the most appropriate moment for the removal of the immunity is that of starting prosecution, as only at this stage the judge is the most vulnerable thing that justifies the intervention of CSM as guarantor of its independence by granting the waiver of the immunity. Furthermore, the CSM's intervention at this stage practically excludes its possible interference in the act of justice [93, p. 44).

The CSM has not only the right, but also the duty to waive the immunity of a judge in all cases where, in his opinion, immunity would impede the achievement of justice and where immunity can be waived without prejudice to the purpose for which it was granted. From this point of view, the CSM's role can be seen in two aspects: Not only as guarantor of the judge's independence, but also as guarantor of the image and reputation of the judge-torch system within the society.

The CSM's decisions regarding the agreement or refusal to waive the immunity must be justified (this is regulated only in the Republic of Moldova, but not in practice) and made public with the data' unpersonalization (as in the case of the Republic of Moldova).

The role of CSM (as a court in Romania and as guarantor of the independence of the judec in the Republic of Moldova) must be limited to ensuring the observance of the requirements of the penal procedure law or, in other words, of the legality of the court's insolence process, without the possibility of replacing the legal liability forms of that court (As the Constitutional Court of the Republic of Moldova has held).

In the chapter on the civil liability of the judge, we stress the following:

1. By generalizing on the subject, we have noted both the theoretical, practical and regulatory difficulty in outlining the notion of judicial error and the particular significance of that moment, especially for defending human rights affected by judicial errors.

Recommendation: On this basis, we support the absolute need to continue theoretical (and not only) efforts to define and specify the content of judicial error with the greatest accuracy, as both the effective protection of human rights depends on the institution in question, and the drawing to civil liability of judges in conditions of law and respect for their independence.

2. These moments are of particular significance to the Republic of Moldova, in particular, taking into account the fact that the institution of civil liability for judicial errors is limited conspitually to criminal proceedings only, A situation which shows that the State does not guarantee in any way compensation to persons who might be harmed by ad-minor legal errors in extra-judicial matters, by judges who perform their duties in bad faith or gross negligence.

3.The civil liability of the magistrates means, in particular, the obligation to make good the damage caused to the justice system by the performance of their duties under certain conditions (causing damages through legal errors accepted by bad faith and gross negligence). The specific nature of this form of responsibility lies in the fact that, on the one hand, we are not in the presence of direct responsibility, as the magistrate cannot be summoned directly by the injured person, who can only appeal against the state. On the other hand, the magistrate will be mediated, based on the action taken by the state to decline, as long as he is proved to be acting in bad faith or with serious negligence.

4. In general, the institution of civil liability of magistrates can be regarded as a fundamental guarantee of the protection of human rights in case of violation by the judicial authority. In this respect, the mechanism for achieving this responsibility must be effective, efficient and balanced in a contemporary democratic society [80, p. 459).

5. ***The civil liability of judges*** is expressly regulated only in the law targeted at Romania, while the Moldovan legislature limited itself to regulating only the civil liability of the state for damages caused by judicial errors. Moreover, in the latter case, including at constitutional level, such liability is only established for damage caused in criminal proceedings.

Recommendation: Starting from the principle of legality which governs the organization and functioning of the judiciary as a whole, it goes without saying that in the Republic of Moldova the civil liability of judges must be expressly regulated in detail. Furthermore, at both constitutional and legislative level, we consider it necessary to expressly regulate the liability of the State for damages caused in all judicial proceedings (not only in criminal proceedings), so that the right of all persons injured by state authorities to obtain compensation is guaranteed and guaranteed.

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THE LIST OF PUBLICATIONS
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1. **COZMA, D.** *The judge's responsibility in Romania and the Republic of Moldova*. Monograph. Under st recall of Prof. GH. Costachi. Chişinău: S.o.b, 2019. 488 pp. ISBN 978-9975-56-640-7
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1. **COZMA, D.** *Legality and efficiency of the judiciary – essential requirements for the respect and protection of human rights in the rule of law.* In: Human rights education (Обучение в области (in eur) Studies gathering (Сборник статей). Comrat: S.o.b, 2017, pp. 186-195 (0,55 ac) ISBN 978-9976-4474-9-2

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ANNOTATION

Cozma Daniela. ***The liability of the magistrates – guarantee of the legality and efficiency of the judiciary in the Republic of Moldova and Romania.*** **Doctor's thesis in law, Specialty 552.01 – constitutional law. Chisinau, 2021**

Structure of the thesis: Introduction, five chapters, general conclusions and recommendations, bibliography of 322 titles, 7 annexs, 212 scientific text pages. The scientific results are published in 24 scientific-technical works.

Keywords: Judge, justice, legality, liability, disciplinary liability, criminal liability, civil liability, legal error, good faith, bad faith, gross negligence, offenses against crime.

Field of study: Constitutional law.

The aim of the study is the detailed comparative research of the institution *of the liability of judges* in the Republic of Moldova and Romania in terms of its legal forms, in order to shape the juu-ridicic regime, the particularities that characterize them, as well as the elucidation of possible legislative shortcomings and the formulation of regulatory optimization solutions in the field.

Research objectives: To elucidate the essentials and content of legality and efficiency as the bow-mental principles of justice in the rule of law; Analysis and justification of the special status of a judge as a public official (person with a public dignity function in the Republic of Moldova) and of his standards of conduct; studying the immunity of the law as guarantor of the independence of the judec, while attracting it to legal liability; Outline the legal regime of the disciplinary administration of the judge of Romania and the Republic of Moldova, in terms of the surrounding features, the grounds, the content of disciplinary misconduct and the applicable disciplinary sanctions; Outline the legal regime of the criminal liability of the judge of Romania and the Republic of Moldova as a civil servant and magistrate for committing service, corruption and anti-justice offenses, as well as special procedural features for its application; Outline the legal regime of the civil liability of the judge in terms of the characteristic features and conditions in which it may occur in Romania and the Republic of Moldova and the accentuation of the correlation with the state's property liability for legal errors.

The novelty and scientific originality of the work is that the research is focused on a comparative approach of the institution of magistrates' liability in the Republic of Moldova and Romania, which has made it possible to clarify similarities and differences in the field, of best practices, as well as of deficiencies that need to be addressed.

The results achieved to solve the important scientific problem lie in the considerable development of the contemporary theory of the judges' liability, which has allowed the legal regime of their disciplinary, constitutional, criminal and civil liability to be shaped, a necessary moment for the development of the measures to optimize the legislation in the field in the Republic of Moldova and Romania.

Theoretical significance. The results achieved are beneficial to the continued development of the theory of constitutional law, judicial, criminal and civil law on the empowerment of the magnets. The paper is presented as a useful monographic source for further research in the field.

Application value of the work. The results obtained can serve as benchmarks for further problem research, as well as in the teaching process as theoretical support for specialist courses.

Implementation of scientific results. The results achieved can be used to review legislation in this area, including at constitutional level, as well as to optimize the mechanism to attract judges from the Republic of Moldova and Romania to disciplinary, constitutional, criminal and civil rights

АННОТАЦИЯ

Козма Даниела. *Ответственность судей – гарантия законности и эффективности судебной власти в Республике Молдова и Румынии.* Диссертация на соискание научной степени доктора права по специальности: 552.01 – Конституционное право. Кишинэу, 2021

Структура диссертации: введение, пять глав, общие выводы и рекомендации, библиография из 322 наименований, 7 приложений, 207 страниц научного текста. Научные результаты опубликованы в 24 научных статьях.

Ключевые слова: судья, правосудие, законность, ответственность, дисциплинарная ответственность, уголовная ответственность, гражданско-правовая ответственность, судебная ошибка, добросовестность, недобросовестность, грубая халатность, преступления против правосудия.

Предмет исследования: конституционное право.

Целью диссертации является подробное сравнительное исследование проблемы ответственности судей в Республике Молдова и Румынии с точки зрения ее правовых форм, для того, чтобы уточнить правовой режим и особенности, а также выяснить возможные законодательные недостатки и сформулировать нормативные решения в этой области.

Задачи исследования: выяснить сущность и содержание законности и эффективности как основополагающих принципов правосудия в условиях правового государства; анализировать и аргументировать особый статус судьи как государственного служащего (лицо, исполняющее ответственную государственную должность в Республике Молдова) и его стандартов поведения; исследование судебного иммунитета как гарантия независимости судьи в условиях привлечения его к юридической ответственности; анализ правового режима дисциплинарной ответственности судьи в Румынии и Республике Молдова с точки зрения правовых особенностей, оснований, содержания дисциплинарных нарушений и применимых дисциплинарных взысканий; анализ правового режима уголовной ответственности судьи в Румынии и Республике Молдова как государственного служащего за совершение служебных, коррупционных преступлений и преступлений против правосудия, а также процессуальных особенностей его применения; анализ правового режима гражданской ответственности судьи с точки зрения характерных черт и условий применения в Румынии и Республике Молдова, и выявление взаимосвязи с имущественной ответственностью государства за судебные ошибки.

Новизна и научная оригинальность. Диссертация содержит ряд научных заключений и рекомендаций, дополняющих юридическую теорию ответственности судей. Оригинальность исследования определяется поставленной цели и задачами, направленными на развитие данной теории в сравнительном аспекте.

Решенная научная проблема заключается в значительном развитии современной теории ответственности судей, позволившей подчеркнуть правовой режим их дисциплинарной, конституционной, уголовной и гражданской ответственности, необходимый для обоснования необходимых мер по оптимизации законодательства Республики Молдова и Румынии в данной сфере.

Теоретическое значение. Полученные научные результаты способствуют непрерывному развитию теории конституционного права, судебного права, уголовного и гражданского права в сфере ответственности судей. Диссертация является полезным монографическим источником для дальнейших исследований в данной области.

Прикладное значение. Полученные результаты могут служить ориентирами для дальнейшего исследования проблемы, а также могутбыть использованны в образовательном процессе как теоретическая основа специализированных курсов.

Внедрение научных результатов. Полученные результаты могут быть использованы для улучшения законодательства в данной сфере, в том числе на конституционном уровне, а также для оптимизации механизма привлечения к дисциплинарной, конституционной, уголовной и гражданской ответственности судей в Республике Молдова и Румынии.

ANNOTATION

Miron Cozma Daniela. *Responsibility of magistrates — guarantee of the legality and efficiency Of the judicious power in the Republic of Moldova and Romania.*
Doctoral thesis in law; Specialty 552.01 - Constitutional law. Chisinau, 2021

Thesis structure: Introduction, five apters, general conclusions and recommendations, ib-geographical of 322 titles, 7 years, 212 pages of scientific text. The scientific results are sweet in 24 scientific papers.

KEYWORDS: Judge, justice, legality, liabilityability, disciplinary leeability, criminal liability, civil liability, miscarriage of justice, good faith faith, bad faith, gross denial, crimes against justice.

Field of study: 552.01 - Constitutional law.

The aim of the paper is to detailed research of the institution of liability of judgers in the Republic of Moldova and Romania in terms of its legal forms, in order to outline the legal regime, the specificities that character them, the regulatory optimization solutions.

The objectives of the research: To clarify the essence and content of legality and efficiency as fundamental principles of justice in the rule of law; analysis and reasoning of the special status of civil servant of the yoke (person with a position of public dignity in the Republic of Moldova) and of his standards of conduct, the study of sound quality in its capacity as a guarantee of the innings of the jundge in the conditions of bringing im to legal liability; shaping the legal regime of the disciplinary liability of the yoke in Romania and the Republic of Moldova, from the perspective of legal features, round, content of disciplinary violations and enforceable disciplinary sanctions; shaping the legal regime of criminal liability of the yoke in Romania and the Republic of Moldova as a civil servant and magistrate for committing crimes of service, corruption and appeal, as well as the procedural particulities of its application; the legal regime of the civil liability of the yoke in terms of character features and conditions in which it may occur in Romania and the Republic of Moldova and emphasis the correction with the property liability of the State for legal errors.

The novity and scientific originality of the paper consists in the fact that the research is fo-conquered on a comparative approach of the institution of magistrates' liability in the Republic of Moldova and Romania, which made it likely to elucidate similarities and differences in best practices, but also of the deficiencies that need to be corrected.

The important scientific problem solved lies in the substantial development of the contemporary problems of magistrates' reliability, which resulted in the legal regime of their disciplinary, criminal and civil liability, which needs to be considered to optimize the legislation of Moldova and Romania in the field.

This is the case for the purposes of this Regulation. The results obtained have the benefit of the continuous development of the constitutional law, judicial law, criminal and civil law in terms of liability of magistrates. The paper is a monographic source for further research in the field.

The applicable value of the paper. The obtained results can serve as milk marks for the sub-question research of the problem, as well as in the teaching process as a practical support for the specialized courses.

Implementation of scientific results. The obtained results can be used to review the legislation in the field, including the constitutional level, as well as to optimize the mechanism for brazing disciplinary, constitutional, criminal and civil liability of judgers from the Republic of Moldova and Romania.

COZMA Daniela

JUDGES' LIABILITY – GUARANTEE OF THE LEGALITY AND EFFICIENCY OF THE JUDICIARY IN THE REPUBLIC OF MOLDOVA AND ROMANIA

The specialty:
552.01. – Constitutional law

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