THE REALIZATION OF THE FUNDAMENTAL GUARANTEES RIGHTS, A CONSEQUENCE FOR ENSURING OF A GOOD ADMINISTRATION - SELECTIVE ASPECTS

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Abstract

The aim of the present study is to analyse the realization of the fundamental guarantees rights as a consequence for ensuring of a good administration. The objectives of this study were to analyse the fundamental guarantees rights: the right of a person aggrieved by a public authority, the petition right and the correlation with ensuring of a good administration. In this research we have highlighted the importance of granting the two fundamental rights, named in the doctrine guarantees rights and the contribution to the developing of a good administration of the state in the favour of the citizens, bringing value to the citizens in a democratic state.

Keywords: *fundamental rights, guarantees rights, petition right, the right of a person aggrieved by a public authority, good administration*

1. Introduction

The purpose of this study is to analyse some selective aspects referring to the realisation of the fundamental rights that are guarantees as a consequence of ensuring good administration.

The study is structured as follows: several selective aspects have been analysed with regard to the right of a person aggrieved by a public authority, the right of petition and the correlation with ensuring good administration.

The subject matter is important because ensuring the good administration of the state to the benefit of its citizens brings value for citizens in a democratic state.

The present paper intended to approach the subject matter with an analysis of the importance of granting the two fundamental rights, named in the doctrine guarantees rights.

As regards the relation between this paper and the already existent specialized literature, the analyses conducted so far have dealt less frequently with the topic approached here, which is the analysis of the guarantees rights and the correlation with ensuring good administration.

2. The right of a person aggrieved by a public authority

The right of a person aggrieved by a public authority provides the constitutional guarantees for any citizen who, having been aggrieved with regard to his rights or a legitimate interest by a Romanian public authority, irrespective of the authority concerned, through an administrative act or by the non-settlement of a request within the term provided by law, may request and is granted legal protection through his fundamental right to obtain the recognition of the claimed right or legitimate interest, the annulment of the act and the reparation of damage.

The citizen is granted equal constitutional protection for prejudices caused by miscarriages of justice. Therefore, a person aggrieved through miscarriages of justice has the right to take action against the state in order to be compensated for the damage suffered. The magistrates who acted in bad faith or serious neglect in the course of their duties are in turn liable in relation to the state for the damage caused to aggrieved persons.

The right of a person aggrieved by a public authority, "*granted by Article 52 of the fundamental law of Romania, together with the right of petition, previously analysed by this study, form the class of rights that are guarantees".*[1]

The rights-guarantees ensure the protection of the manifestations of citizens' will in relation to public authorities and also of other rights, freedoms and citizen interests, thus ensuring the good administration of the state to the benefit of its citizens.

In the Constitution of Romania, the right of a person aggrieved by a public authority was brought under regulation by Article 52: *(1) A person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage. (2) The conditions and limitations related to the exercise of this right are provided for by an organic law. (3) The State has patrimonial liability for any damage caused by*

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[1] C.R. Pavel, *Considerații teoretice privind realizarea drepturilor garanții*, in Revista Română de Criminalistică no. 1/2017, Vol. XVIII, Bucharest, p. 2475.

miscarriages of justice. The liability of the State is determined under the law and does not eliminate the liability of the magistrates who acted in bad faith or serious neglect."

In our opinion, the legal protection of the right of a person aggrieved by a public authority is provided through the right of free access to justice granted by Article 21 of the Constitution of Romania.

The guarantees of a person aggrieved with regard to a right or a legitimate interest have been governed by an organic law, namely the Romanian Law of Administrative Dispute 554/2004[2].

A doctrine author[3] stated with regard to the right of a person aggrieved by a public authority that *"the category of jurisdictional guarantees which protect the citizen against public authorities, whichever they might be, may include the right of a person aggrieved by such an authority through an administrative deed."*[4]

Another author[5] showed that "*for a definition of the concept of "fundamental rights", the following have been considered: (a) the fundamental rights are subjective rights of the citizens; b) these subjective rights are essential to citizens' life, freedom and dignity, and indispensable to the free development of human personality; c) the fundamental rights are established by the Constitution and granted by the Constitution and by the laws.*"

With regard to the *institution of administrative dispute*, our opinion is that it "*represents the citizen's guarantee, granted by the state to restrain any possible abuses by the public authorities for protecting the citizens' rights and freedoms."*[6]

Examining an exception of unconstitutionality, the Constitutional Court of Romania found that, according to Article 52 of the Constitution, "*a person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage. In the opinion of the Court, this constitutional text should be correlated with the constitutional provisions of Article 21, which govern the free access to justice and those of Article 126 para. (6) first sentence, according to which, the judicial review of the administrative deeds of public authorities, by means of administrative dispute, is guaranteed."*[7]

The Constitutional Court of Romania, in settling the exception, held that in the judicial phase where the claimed right or legitimate interest is recognised, the aggrieved person should have all legal prerogatives and constitutional guarantees granted by Article 21 para. 3 and Article 6 Right to a fair trial of the Convention for the Protection of Human Rights and Fundamental Freedoms. The right to a fair trial should be interpreted in the light of the principle of the rule of law, which assumes the existence of an effective legal remedy enabling citizens to assert their civil rights (*Judgment of 12 November 2002 in the Case Běleš and others v. The Czech Republic, paragraph 49).*

At the same time, the Constitutional Court of Romania considered that "*the right of access to a court of law should be "practical and effective"*. The effectiveness of the right of access requires that an individual "*must have a clear, practical opportunity to challenge an act that is an interference with his rights"* (*Judgment of 4 December 1995 in the Case Bellet v. France, paragraphs 36 and 38*). Therefore, the effectiveness of the right of access to a court requires that the exercise of such right is not affected by legal or factual obstacles or impediments, which are likely to question its very substance."[8]

Moreover, the Constitutional Court of Romania held that *"within the context of the constitutional regulation of the rights of persons aggrieved by a public authority and of the inherent guarantees of this right, it is crucial to determine the passive procedural capacity of the law subjects that issue acts of public power, because this is one of the admissibility criteria for an administrative dispute action. Therefore, the Court holds that Article 2 para. (1) letter b) of the Law of Administrative Dispute 554/2004 defines the "public authority" as being any of the bodies of the state or of the administrative-territorial units which acts, within a public power regime, to fulfil a legitimate public interest."*[9]

In conclusion, the Constitutional Court of Romania found that *"the single article point 2 sub-point 4 of the law for the approval of the Government Extraordinary Decree no. 21/2015 violates the right to a fair trial of a person aggrieved with regard to a right or a legitimate interest by a public authority, stipulated by Article 21 para. (3) of the Constitution and Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the legislator not having met its obligation to take legislative measures which enable the enforcement of court decisions. The Court held that, in accordance with its own jurisprudence and that of the European Court of Human Rights, the legislator has the responsibility to find appropriate means to ensure the*

[2] Law of Administrative Dispute 554/2004 in force as of 06.01.2005, with its subsequent changes and additions, based on its publication in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

[3] G. Iancu, *Drept constituțional şi instituții politice,* 3rd edition, C.H. Beck, Bucharest, 2014, p. 294-295.

[4] G. Iancu, *Proceduri Constituționale, Drept procesual constituțional,* Editura Monitorul Oficial, Bucharest, 2010, p. 133.

[5] N. Pavel, *Drept constituțional şi instituții politice, Teoria Generală,* Editura Fundației România de mâine, 2004, p. 70.

[6] C.R. Pavel, *Evoluția istorică a dreptului la bună administrare,* in Revista Studii Juridice Universitare, no. 1-2, Year VI, Chișinău, 2013, Institute for Research into the Protection of Human Rights, p. 233.

[7] Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 of 17.02.2016.

[8] Ibid.

[9] Ibid.

effectiveness of court decisions, by adopting legislative measures which are intended to reduce the duration of and simplify the enforcement procedure, while observing the constitutional requirements of the rule of law. However, in this case, by adopting the criticised regulation, the legislator intervened in the civil lawsuit, in the enforcement phase of a judgment pronounced by a court of law, depriving the jurisdictional act which has the authority of res judecata of its legal effects. By preventing the enforcement of a court decision, the legislator disregards the principle of balance and separation of powers of the state, consecrated by Article 1 para. 4 of the Constitution, which devolves on the authorities of the state the obligation to exercise their legal and constitutional duties in the framework and within the limits provided for by the Fundamental Law. By adopting the criticised regulation, the legislating authority acted ultra vires, going beyond its constitutional competences to the detriment of the judicial authority."[10]

The right of a person aggrieved by a public authority has been granted in the Constitution of the Republic of Moldova by Article 53: "*(1) The person aggrieved with regard to a right by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, is entitled to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage. (2) The State has patrimonial liability, under the law, for damages caused by miscarriages of justice in criminal trials by the investigation bodies and the courts of law."*

With reference to Article 53 of the Constitution of the Republic of Moldova, according to a first author[11], the right of a person aggrieved by a public authority was "*granted through the establishment of some control over the administrative acts, and also of the patrimonial liability of the state for damages brought to persons by illegal acts or errors made by public servants. The fundamental right previously stated is a constitutional guarantee for other constitutional rights and freedoms, a type of legal support for the exercise of various forms of control on the activity of public authorities.*"

In the Republic of Moldova, in order to grant the right of a person aggrieved by a public authority, a fundamental right provided for by Article 53 of the Constitution of the Republic of Moldova, on 10 February 2000, the Parliament of the Republic of Moldova adopted the Law of Administrative Dispute 793 – XIV, published in the Official Gazette of the Republic of Moldova no. 57-58/375 of 18.05.2000, a law which "*is based on the establishment of jurisdictional control on the activity of the public administration authorities."*[12]

The Parliament of the Republic of Moldova adopted, on 25 February 1998, the Law 1545-XIII on the reparation of the damage caused by illicit actions of the criminal prosecution and preliminary inquiry bodies, the prosecutors and the courts of law, which was published in the Official Gazette of the Republic of Moldova no.50-51/359 of 04.06.1998.

The Constitutional Court of the Republic of Moldova, in the settlement of a case, revealed that *"the exercise of the constitutional right of a person to have the damage caused by a public authority repaired comes under the scope of the constitutional principles of universality, equality and free access to justice. By virtue of these principles, the citizens of the Republic of Moldova benefit from the rights and freedoms consecrated by the Constitution and other laws and have the obligations provided by them; the respect for and the protection of the individual is a primary duty of the State; any person is entitled to effective satisfaction from the competent courts of law against those acts which violate his rights, freedoms and legitimate interests; no law can restrict the free access to justice (Article 15, Article 16 para. (1), Article 20 of the Constitution)."*[13]

A second author[14] from the Republic of Moldova, with regard to the fundamental article, held that *"the right of a person aggrieved with regard to a right by an illegal act by a body of the state to ask the competent bodies, under the law, to annul that act and to repair the damages is in close connection through its content with the right of petition; this right also appears as a general judicial guarantee of the exercise of fundamental rights. On the grounds of this right, the citizen has the freedom to approach the competent bodies against any grievance by a body of the state, a legislating body, a body of the administration, or a judicial or prosecution body. The citizen may ask the competent bodies both to annul the act and, implicitly, to repair the damage; the request may be addressed both to the issuing body and to its superior body. If the law allows the reparation of damage, the request may also be addressed to other state bodies which are declared competent."*

The constitutional regulation of the right of a person aggrieved by a public authority refers to *all administrative acts issued by the public authorities*; its constitutional legal force *not being limited to acts issued by executive authorities*. It does not apply to laws issued by the Parliament; however, it applies to administrative deeds issued by the Parliament. The regulation has no applicability in the area of court

[10] Ibid.

[11] B. Neagu, N. Osmochescu, A. Smochină, C. Gurin, I. Creangă, V. Popa, S. Cobăneanu, V. Zaporojan, S. Țurcan, V. Șterbeț, A. Armeanic, D. Pulbere, *Constituția Republicii Moldova, Comentariu*, Arc, Chișinău, Republic of Moldova, 2012, p. 209.

[12] Ibid., p. 211.

[13] Decision of the Constitutional Court of the Republic of Moldova no. 37 of 05.07.2001 for the control of the constitutionality of the provisions of Article 43 of the 2001Budget Law 1392-XIV of 30 November 2000, published in the Official Gazette of the Republic of Moldova no. 81/30 of 20July 2001.

[14] T. Cârnaț, *Drept Constituțional,* 2nd edition (reviewed), Chisinau, Moldova, 2010, p. 307.

decisions, but is applicable to administrative deeds issued by the courts of law, prosecutors or other structures of the state.

The right of a person aggrieved by a public authority was granted by Article 52 of the Constitution of Romania, which provided for the possibility for the aggrieved person either to obtain the recognition of the claimed right or legitimate interest or the annulment of the act and the reparation of damage. Aggrieved persons may realise their rights by exercising the right of free access to justice under Article 21 of the Constitution of Romania.

3. The petition right

The right of petition is a fundamental citizen right which grants *a right to demand and to make requests before the authorities of the state*. This right to demand, being an essential right, warrants the existence and the observance of all other fundamental citizen rights and ensures the good administration of the state for the benefit of its citizens.

The right of petition grants the citizen's civil liberties.

One of the first iconic documents where we can find the historical sources of human rights is *Magna Carta [15] (Magna Carta Libertatum)*, a document issued in England in 1215.

Based on our research, the right of petition was the first fundamental human right acknowledged by Magna Carta in 1215. Therefore, we have found in the content of the aforesaid document, in Chapter 61 (in other translations Chapter 70 – author's note), that *a petition announcing an act of injustice should be settled within 40 days*.[16]

Another British document which is among the first constitutional provisions, namely *The Bill of Rights[17]*, acknowledged, in 1689, in Article 5, that the *citizens who brought petitions to the king would not be condemned or accused for making them*.*[18]*

On 15 December 1791, the First Amendment to the Constitution of the United States[19] was adopted, which is part of the Bill of Rights that *granted the citizens' right of petition for having the injustices repaired[20]*.

We can find among other British documents containing some of the first constitutional rules: *The Petition of Rights[21]*, adopted in 1628, *which attempted the exercise of control by the Parliament over the British armed forces[22]*. *The control of the regime of finances[23]* was established in 1698 by *The Bill of Rights*. *A first attempt to establish the independence of justice[24]* was brought under regulation by *The Act of Settlement[25]* in 1701.

Later, other documents were also issued in the Great Britain, as constitutional sources, like *The Parliament Act[26] (1911)* and *The Representation of the People Act[27] (1949)* with regard to the British election system.

The right of petition falls into the category of fundamental citizen rights, freedoms and duties according to the Constitution of Romania[28].

In the author's opinion, *"the right of petition has the value of a right-guarantee, being a person's right to appeal to the state thorough its administrative bodies anytime when its intervention is required."[29]*

The Romanian doctrine held that *"through the right of petition, citizens are in a direct relation to the authorities of the state, at their own initiative, and they have the opportunity to settle both personal problems, and issues of a general interest."*[30]

In the contemporary legal system, the right of petition, as a fundamental right in Romania, is governed by Article 51 of the Constitution of Romania republished in 2003: "(1) Citizens have the right to address to the public authorities through petitions formulated in the name of their signatories. (2) Legally established organisations have the right to address petitions exclusively in the name of the groups they represent. (3) The exercise of the right of petition is free of charge. (4) Public authorities have the obligation to answer petitions within the terms and in the conditions established by the law."

Article 47 of the 1991 Constitution of Romania was not changed by the Reviewing Law 429 of 2003, its form being replicated by the 2003 Constitution of Romania.

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[15] F. Lieber, On Civil Liberty and Self-Government, Philadelphia, Lippincott, Grambo and Co, 1853, Reproduction by Forgotten Books, London, Great Britain, 2015, Volume II, pp. 178-201.
[16] Ibid., p. 190
[17] Ibid., pp. 221-227.
[18] Ibid, p. 224.
[19] E.S. Tănăsescu, N. Pavel, *Constituția Statelor Unite ale Americii,* All Beck, Bucharest, 2002, pp. 53-86.
[20] Ibid, p.72.
[21] E.S. Tănăsescu, N. Pavel, *Documente constituționale ale Regatului Unit al Marii Britanii și Irlandei de Nord*, All Beck, Bucharest, 2003, pp. 56-62.
[22] Ibid, p. 24.
[23] Ibid.
[24] Ibid.
[25] Ibid, pp. 89-95.
[26] Ibid, pp. 96-101.
[27] Ibid, p. 24.
[28] Constitution of Romania, reviewed in 2003, published in the Official Gazette of Romania, Part I, no. 767 of 31 October 2003.
[29] C.R. Pavel, *Evoluția istorică a dreptului la bună administrare,* in Revista Studii Juridice Universitare, no. 1-2, Year VI, Chișinău, 2013, Institute for Research into the Protection of Human Rights, p. 232.
[30] Ibid.

The right of petition was considered by a first author[31] *"a right of first generation"* because the appeal to this right has as consequence an action by the approached public authorities and not only a confirmation that the citizens' petitions have been received.

The right of petition was qualified as "*a right-guarantee, meaning a right by means of which, in fact, effective legal protection is ensured for other rights and legitimate interests too, at the same time with the protection of a particular form of citizen manifestation."*[32]

A second author[33], held about the right of petition that it is part of "*the main human rights (...) which is free of charge"*.

A third author[34] affirmed that *"The right of petition, (...) is one of the most important organised guarantees of the fundamental rights and freedoms, being classified as a right-guarantee for all rights and freedoms of the citizens."*

The same author[35] held, about the right of petition, that *"is one of the most important organised guarantees of fundamental rights and freedoms, being classified as a right-guarantee for all rights and freedoms of the citizens."*

The right of petition was characterised as *"a citizen right with tradition in the Romanian legal system, falling into the category of rights that are guarantees, being also a general legal guarantee for other rights and freedoms."*[36]

The right of petition is granted at EU level by Article 44 of the Charter of Fundamental Rights of the European Union[37]: *"*Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament*."*

In our opinion, the right of petition *has the characteristic of being unique in respect of its scope and the legal effects it generates. Through its effects, it guarantees all the fundamental rights and freedoms of the citizens.*[38]

The Constitutional Court of Romania, with regard to the right of petition, provided by Article 51 of the Constitution, *"has held in its jurisprudence that this is a right benefiting citizens individually or groups of citizens, no matter if these groups are ad-hoc or organised in the forms provided by law. On the other hand, the free access to justice, provided for by Article 21 of the Constitution, means that any person may appeal to justice for the protection of his rights, freedoms and legitimate interests, and no law may restrict the exercise of this right."*[39]

In other cases, the Constitutional Court of Romania analysed the aspects related to the charge of some legal fees in the course of the act of justice: *"with regard to the alleged violation of constitutional provisions referring to the just assignment of fiscal duties, the Court remarks that this cannot be held, because the criticised provisions are just an application of those provided for by the Constitution, and the expenses incurred in the act of justice are public expenses, to which the citizens have the obligation, pursuant to Article 56 of the Constitution, to contribute through taxes and fees, determined under the law."*[40]

Any citizen may exercise his right of petition and, in parallel, his right to appeal to justice or the right of a person aggrieved by a public authority, whether by formulating a complaint based on Article 21 or a petition based on Article 51 of the Constitution of Romania: *"the formulation of a complaint based on Article 2781 of the Code of Criminal Proceedings is not such as to prejudice the right of the person to approach the public authorities with petitions, consecrated by Article 51 of the Constitution, or the right of a person aggrieved with regard to a right or a legitimate interest, by a public authority, through an administrative deed or by the non-settlement of a request within the time limit provided by law, to obtain the recognition of the claimed right or legitimate interest, the annulment of the deed and the reparation of damage, according to Article 52 of the Constitution."*[41]

The constitutional dispute court has made, with regard to the right of petition, a clear distinction between any type of request or noticed addressed to the courts of law in civil matters, granted by Article 21, and the right of petition: *"the approach of the courts of law under Article 4 para. (1) second sentence of Law 221/2009 by any natural person or legal person concerned, or ex officio by the prosecution office attached to the tribunal competent in the area of residence of the concerned person, after the death of the person, for the purpose of compensation for the moral prejudice suffered as a result of the conviction is not an aspect of the right of petition. And this is because*

[31] Ibid, p. 512.
[32] Ibid.
[33] V. Gionea, N. Pavel, *Curs de drept constituțional*, Scaiul, Bucharest, 1996, p. 66.
[34] G. Iancu, *Drepturile, libertățile și îndatoririle fundamentale în România*, Praxis, C.H. Beck, Bucharest, 2003, p. 365.
[35] G. Iancu, *Proceduri constituționale, Drept procesual constituțional*, Editura Monitorul Oficial, Bucharest, 2010, p. 150.
[36] I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice,* 15th edition, *Volume I,* C.H. Beck, Bucharest, 2016, p. 186.
[37] The Charter of Fundamental rights of the European Union was published in the Official Journal of the European Union, Romanian version, C83/02/30 March 2010.
[38] C.R. Pavel, *Aspecte selective cu privire la garantarea dreptului de petiționare,* in Materials of the International Scientific Symposium "The forensic investigation of violent crimes", Association of Romanian Criminalists, Bucharest, 2017.
[39] Ibid.
[40] Decision of the Constitutional Court of Romania no. 389 of 24 March 2011 published in the Official Gazette of Romania, Part I no. 471 of 05.07.2011.
[41] Ibid.

the right of petition takes the form of requests, complaints, notices and proposals in connection with the settlement of personal or group issues which do not involve the way of a legal action, and to which public authorities have the obligation to respond within the terms and in the conditions determined under the law, while the citations, which initiate a civil law suit, are settled based on the specific rules of legal actions."[42]

The Constitutional Court of Romania held about the appeal to citizens' subjective rights that "*the approach of the courts of law for appealing to a subjective right disregarded or violated or for the realization of an interest which may be obtained only through a legal action is not an aspect of the right of petition, but it is governed by rules specific to court activity."*[43]

Therefore, the Constitutional Court of Romania provided an accurate definition with regard to citizens' rights to address to the public authorities with petitions and the obligations of the latter to respond. Moreover, the Constitutional Court also pronounced a decision on citizens' right of free access to justice, which should not be mistaken for the right of petition and which entitles citizens to appeal to justice for the protection of their rights, freedoms and legitimate interests.

The right of petition, being a fundamental right, has the characteristic of a legal guarantee, benefitting on one hand from the systems warranting the constitutional provision and, on the other hand, from the legal guarantee of a subjective right, ensuring the good administration of the state to the benefit of citizens.

The right of petition is part of the category of rights-guarantees, rights which provide legal protection for the citizen and ensure the good administration of the state to the benefit of its citizens. The right of petition ensures a citizen's right to address to a public institution and to receive an answer within the term provided by law.

4. Correlation with ensuring good administration

In our opinion, the right of petition and the right of a person aggrieved by a public authority, known in the doctrine as rights-guarantees, are rights that ensure the good administration by the public authorities for and to the benefit of citizens. Therefore, with their guarantee as fundamental rights, they serve as basis and foundation for all fundamental human rights.

In our view, a strong correlation has been found between the rights that are guarantees and ensuring good administration.

The right of petition ensures and guarantees the right of any citizen to petition and, correlatively, the obligation of the public authorities to respond to that petition within the terms and in the conditions stipulated by the organic law. Depending on the type of petition, the legislator provided for various ways of settlement. Petitions may be formulated as different types of requests, complaints, proposals or notices. In the Constitution of Romania, the right of petition is free of charge. Therefore, the right of petition *ensures the legal protection of the citizen, of all fundamental citizen rights generally*[44] and, particularly, the good administration of the state.

The right of a person aggrieved by a public authority ensures, generally, the protection of all fundamental citizen rights and, particularly, the good administration. The two rights, the right of petition and the right of a person aggrieved by a public authority respectively, make the class of rights-guarantees, as they are referred to in the doctrine.

In our opinion, approaching the subject of good administration in a state governed by the rule of law, to the benefit of its citizens, is a topical legal matter. Approached at constitutional level, in our opinion, the good administration is ensured by the realization of right-guarantees. Therefore, granting the right of petition and the right of a person aggrieved by a public authority provides legal protection to all fundamental citizen rights, ensuring in this way the good administration of the state to the benefit of its citizens.

The rights-guarantees, namely the right of petition and the right of a person aggrieved by a public authority, are guaranteed and provided similarly in the Constitution of Romania and the Constitution of the Republic of Moldova.

A person aggrieved by a public authority, with regard to a right or a legitimate interest, is entitled to the recognition of the claimed right or legitimate interest, the annulment of the act and the reparation of damage.

Good administration has been an ongoing concern of international bodies.

Therefore, with the entry into force of the Lisbon Treaty, the *"Charter of the Fundamental Rights of the European Union*[45] *became legally binding, and this led to some substantial reinforcement of the role of the rule of law in the governance of the European Union".*[46]

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[42] Decision of the Constitutional Court of Romania no. 672 of 31 May 2011 published in the Official Gazette of Romania, Part I no. 580 of 17.08.2011.

[43] Decision of the Constitutional Court of Romania no. 296 of 08 July 2003 published in the Official Gazette of Romania, Part I no. 577 of 12.08.2003.

[44] C.R. Pavel, *Aspecte selective cu privire la garantarea dreptului de petiționare*, Materials of the International Scientific Symposium "The forensic investigation of violent crimes", Association of Romanian Criminalists, Bucharest, 2017.

[45] Charter of the Fundamental Rights of the European Union, published in the Official Journal of the European Union C 83 of 30 March 2010, p. 389-403.

[46] C.R. Pavel, *Dreptul la bună administrare – un drept garanție împotriva deciziilor administrative arbitrare în spațiul Uniunii Europene*, in Revista Studii Juridice Universitare, Year VII, no. 1-2, Institute for Research into the Protection of Human Rights, Chișinău, 2014, p. 278.

The right to good administration was consecrated *expressis verbis* by Article 41 of the Charter of the Fundamental Rights of the European Union.

It represented therefore a stage in a journey which started decades ago. Before, it had been the jurisprudence of the Court of Justice which determined the Union to respect the fundamental rights. Now, "the *Charter brings together in a single, coherent and legally binding instrument the fundamental rights which are bonding upon the EU institutions and bodies"*[47].

In the European Union, *the protection of fundamental rights is granted both at national level by the constitutional systems of its Member States,* which precede the Charter and have a more developed jurisprudence, *and at EU level, by the Charter. The Charter applies to the actions of all EU institutions and bodies.*

Another document adopted at European level is the Recommendation[48] CM/Rec (2007)7 of the Committee of Ministers of the member states of the Council of Europe with regard to good administration.

The Preamble of the Recommendation held as considerations for its adoption that public authorities have the obligation *to provide citizens with services, instructions and rulings, and that when the public authorities are required to take action, they must do so within a reasonable period.*

Other considerations in the Preamble of the Recommendation hold that *maladministration*[49], *whether as a result of official inaction by the public administration* (silence of the administration in our doctrine, the author's note), *or delays in taking action or taking action in breach of official obligations, must be subject to sanctions through appropriate procedures, which may include judicial procedure*.

The Recommendation also held among its considerations that *good administration must be ensured by the quality of legislation*, which must be clear and accessible, and the services of public administration must meet the basic needs of society.

The principles of the right to good administration have also been identified in Article 2 of the International Covenant on Civil and Political Rights[50], being set out in its thesis.

The right-guarantees "*ensure the protection of the manifestations of the citizens' will in relation to public authorities and also of other rights, freedoms and citizen interests"*[51], thus ensuring the good administration of the state to the benefit of its citizens.

In French administrative law, the phrase *mission of the administration* or *mission administration* is used to identify the duty of the administration to devise and contribute to the implementation of solutions intended to provide answers to novel problems, considered, rightfully or not, as impossible to be solved only by appealing to the techniques of classical administration[52]. Next, the author states: *The ambiguity of this type of administrative action arises from the fact that the Mission Administration needs a suppleness of intervention which, generally, makes it benefit from a legal regime which departs, to a variable extent, from the common administrative law, modelled by the law and the judge in order to guarantee the rights of those subject to administration and the requirements of the general interest.*

Antonie Iorgovan[53], in a focused formulation, defined *public administration "as the ensemble of activities of the President of Romania, the Government, the central autonomous administrative authorities, the local autonomous administrative authorities, and, as appropriate, their subordinate structures, by means of which, within the regime of public power, the laws are fulfilled or, within the limits set by the law, the public services are delivered"*.

As viewed by the author named above, the phrase *the laws are fulfilled* has at least the following significances: a) the law is the ceiling of public administration; b) the principle of lawfulness is a fundamental principle of public administration; c) the application of the law also involves the adoption of regulatory documents by the administration; d) the regulatory administrative documents has less legal force than the laws and are ranked depending on the position and the competence of the issuing body; any individual act or any material operation (paving a street, transportation of people, directing the traffic, the constraint to medical treatment in case of transmissible diseases, blocking goods which do not meet quality standards, sacrificing animals so as to prevent the spread of epizooty, issuing an authorisation, applying a sanction, etc.), is a practical execution of the law. In other words, the fulfilment of the law involves both an activity concerned with the organisation and preparedness of the execution, of a regulatory nature (dispositions, circulars, instructions from the

[47] Ibid.

[48] Recommendation CM/Rec(2007)7 was adopted by the Committee of Ministers on 20 June 2007 at the 999bis Reunion of the delegates of the ministers from the member states of the Council of Europe, available on https://wcd.coe.int/ViewDoc.jsp?p=&id=1155877&Site=CM&direct=true, accessed on 20 March 2019.

[49] The notion of "maladministration" in the Preamble of the Recommendation CM/Rec(2007)7 adopted by the Committee of Ministers on 20 June 2007 at the 999bis Reunion of the delegates of the ministers from the member states of the Council of Europe, available on http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17133&lang=en, accessed on 20 March 2019.

[50] International Covenant on Civil and Political Rights was adopted on 16 December 1966 by the United Nations General Assembly. Romania signed the Covenant on 27 June 1968 and ratified it with the Decree no. 212/1974, published in the Official Bulletin of Romania number 146 of 20 November 1974, and it became effective on 20 November 1974.

[51] C.R. Pavel, *Considerații teoretice privind realizarea drepturilor garanții*, in Revista Română de Criminalistică nr. 1/2017, Vol. XVIII, Bucharest, p. 2475.

[52] Raymond Guillen, Jean Vincent, *Lexique de termes juridiques*, 8ᵉédition, Dalloz, Paris, 1990, p.22.

[53] Antonie Iorgovan, *Tratat de drept administrativ*, Volume I, 4th edition, All Beck, Bucharest, 2005, p. 82.

government downwards), and an activity involving the execution in a concrete situation (issuance of unilateral acts, conclusion of contracts, carrying out material operations).

The author named above also defined *public administration* in *a formal organic sense* and *in a functional material sense*[54].

In the formal organic sense, the mentioned author evoked the following authorities: *the President of Romania, the Government, the ministries and other bodies directly subordinated to the Government, autonomous specialised central bodies, institutions subordinated to the ministries; the prefect; local specialised bodies subordinated to the ministries and managed by the prefect; autonomous local bodies (the county council, the local council, the mayor) and their subordinate institutions.*[55]

In a functional material sense, the notion of public administration *evokes legal documents and material operations by means of which the law is executed, either through the issuance of subsequent rules, or through the organisation or, as appropriate, the direct provision of public services.*[56]

Verginia Vedinaş[57] defined public administration as the "*ensemble of activities carried out by the administrative authorities of the state, the local autonomous authorities, the inter-community development associations and bodies providing public services and public utility bodies of local or county interest, by means of which, within the regime of public power, the law is executed in a material, practical sense or by the issuance of regulatory documents of a lower legal force than the law, or by means of which public services are delivered".*

Dana Apostol Tofan[58] stated about *public administration* that it represents *"the central notion of administrative law",* and with reference to the *notion of administration*, she set out that *"it is a fundamental notion also for the science of administration, which analyses it in its multiple senses, its complex content comprising the imperatives: to provide for, to organise, to lead, to coordinate and to control".*

Considering the existence of the most parallelisms between the organisational structuring of public administration in Romania and in France, this study has held from the French administrative doctrine the following definition, which determines the content of the concept or notion of public administration.

Professor Jean Rivero[59] defined administration as "*the activity through which public authorities proceed, using the prerogatives of public power if necessary, to satisfy the needs of the public interest".*

An analysis of the Constitution of the Republic of Moldova[60] identified the notion of *right to administration*, governed by Article 39, according to which: *"(1) Citizens of the Republic of Moldova are entitled to participate in the administration of public affairs directly, as well as through their representatives. (2) Any citizen is ensured, under the law, the access to a public position."*

We have also identified in the Constitution of the Republic of Moldova, besides the rights that are guarantees, namely the right of petition (Article 52) and the right of a person aggrieved by a public authority (Article 53), the right to administration (Article 39), which is legally protected by the two rights-guarantees.

Therefore, the good administration was guaranteed in the Republic of Moldova at constitutional level by the provisions of the right to administration as a fundamental citizen right.

If we compare the two constitutions, of the Republic of Moldova and of Romania, we can see that the right to administration, as a fundamental right, is not found in the Constitution of Romania.

In the opinion of an author[61], *"the citizens of the Republic of Moldova are entitled to participate in the administration of public affairs directly, as well as through their representatives. The specifications necessary in this context are concerned with: 1) the condition of being a citizen of the Republic of Moldova; 2) the definition of public affairs; 3) the direct participation to administration; 4) the participation in administration through representatives."*

Article 39 grants the right to administration only to citizens of the Republic of Moldova. With regard to the notion of *"public affairs"*, the same author defines it as follows "*the notion of public affairs is identified with that of business (positions, duties, competences, prerogatives, etc.) of public authorities, the activity of which is represented by the ensemble of activities of the Parliament, the Government, the President of the Republic of Moldova, of central and local public administrative authorities, as well as of their subordinate structures, by means of which the laws are fulfilled and public services are delivered. The category of public affairs also includes issues raised at the level of public interest, meaning activities which satisfy some social needs. Precisely, the right to participate in the administration of public affairs means the right to occupy positions (posts, ranks) in the public*

[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] VerginiaVedinaș, *Drept administrativ*, 8th edition reviewed, Universul Juridic, Bucharest, 2014, p. 38.
[58] Dana Apostol Tofan, *Drept administrativ*, Volume I, 3rd edition, C.H. Beck, Bucharest, 2014, p. 18.
[59] Jean Rivero, *Droit administratif*, 6th edition, PrécisDalloz, Paris, 1973, p. 13.
[60] Constitution of the Republic of Moldova of 29 July 1994 published in the Official Gazette no. 1 of 27 August 1994.
[61] B. Neagu, N. Osmochescu, A. Smochină, C. Gurin, I. Creangă, V. Popa, S. Cobăneanu, V. Zaporojan, S. Țurcan, V. Șterbeț, A. Armeanic, D. Pulbere, *Constituția Republicii Moldova, Comentariu*, Arc, Chișinău, Republic of Moldova, 2012, p. 163.

authorities, where activities of a general (public) nature take place."[62]

Any citizen of the Republic of Moldova is entitled to participate in public affairs and may elect representatives. This is a constitutional provision of the right to administration which, in turn, confers to the citizen the right to appoint representatives based on the right to vote, freely expressed. The democracy of a state governed by the rule of law is so ensured, the representatives of the state being elected by the free vote of the people.

In our opinion, good administration is the result of good public administration. For the identification of a definition of the concept of good administration, we have conducted an analysis of the doctrine in the matter.

A first author[63] said that *"there is not a universally valid definition of good administration, beyond the regulatory texts which refer to this concept."*

The same author held that *"the principle of good administration is an old and well-founded idea. Its specific content has developed gradually, so that, at present, this is one of the key concepts of modern administrative law."*[64]

The same author also mentioned with regard to good administration: *"administrative institutions have the obligation to exercise the rights and responsibilities which are conferred to them by laws and other regulations based on the concept of law, so as to avoid any rigid application of legal provisions (...) institutions must adapt the legal rules to the social and economic realities."*[65]

A second author[66] affirmed that *"Although there is no express provision with regard to the right to good administration in the domestic legislation, the elements of this right are contained, the majority of them, by the provisions of the fundamental law."* The same author held in the article previously quoted that with *the correlation of fundamental provisions* in the Constitution of Romania, namely: Article 16 Equality of rights, Article 21 Free access to justice, Article 24 right to defence, Article 31 Right to information, *Article 51 Right of petition, Article 52 Right of a person aggrieved by a public authority*, Article 115 Legislative delegation, Article 120 Basic principles, *the right to good administration is guaranteed*, these fundamental rights being essential components of the right to good administration.

A third author[67] mentioned about the right to good administration that *"it is a complex legal institution and has the legal nature of a fundamental right, with a general content which includes a multitude of attributes referring to the organisation and functioning of the administration, recognised as freestanding rights. Therefore, in relation to the state, the right to good administration is asserted as a sum of obligations which the state has in connection with the organisation of public administration, on one hand, and for guaranteeing the effectiveness and compliance with the law of the activity of the public administration, on the other hand."*

In our opinion, *good administration is ensured by the realization of the rights-guarantees*. Therefore, *the rights-guarantees ensure the realization of good administration*. The protection of the citizen's rights before public authorities is realised at constitutional level through *the correlation between the right of petition and the right of a person aggrieved by a public authority*.

The right of a person aggrieved by a public authority is *the constitutional guarantee* which underlay the adoption in Romania of Law 554/2004[68], namely the Law of Administrative Dispute.

The right of petition ensures the right of citizens to *address to a public authority and to receive an answer*. The right of petition is *the constitutional guarantee* which underlay the adoption of Government Decree no. 27/2002 [69] on the activity of settling petitions, approved with changes and additions by Law 233/2002.

The right of petition is a legal guarantee of all fundamental rights. Its realisation ensures a citizen's right to request, to formulate a petition, understood as the *"request, complaint, notice or proposal, formulated in writing or through electronic mail, which a citizen or a legally established organisation may address to the central and local public authorities and institutions, to the decentralised public services of the ministries and other central bodies, to national companies and societies, to companies of local or county interest, as*

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[62] Ibid, p. 164.

[63] R. Carp, *În direcția unui drept administrativ european? Buna administrare potrivit normelor cu și fără forță constrângătoare ale Consiliului Europei și Uniunii Europene*, in Revista de drept public, no. 4/2010, C.H. Beck, p. 2.

[64] T. Fortsakis, *Principles governing good administration*, European Public Law, vol. 11, issue 2, 2005, p. 207, apud. R. Carp, *În direcția unui drept administrativ european? Buna administrare potrivit normelor cu și fără forță constrângătoare ale Consiliului Europei și Uniunii Europene*, Revista de drept public, no. 4/2010, C.H. Beck, p. 2.

[65] Ibid.

[66] V. Vedinaș, S.C. Ambru, *Bazele constituționale ale dreptului la o bună administrare*, in E. Balan, C. Iftene, D. Troanta, G. Varia, M. Văcărelu, *Dreptul la o bună administrare. Între dezbaterea doctrinară și consacrarea normativă*, Comunicare.ro, Bucharest, 2010, p. 46.

[67] E. Albu, *Dreptul la o bună administrație în jurisprudența Curții Europene a Drepturilor Omului*, in Curierul Judiciar, C.H. Beck, nr. 12/2007, p. 129.

[68] Law of Administrative Dispute 554/2004, with its subsequent changes and additions, published in the Official Gazette of Romania, Part I, no. 1154 of 07.12.2004.

[69] Government Decree no. 27/2002 on the activity of settling petitions, approved with changes and additions by Law 233/2002, published in the Official Gazette of Romania, Part I, no. 84 of 01.02.2002.

well as to autonomous companies, hereinafter called public authorities and institutions."[70]

In practice, several types of petitions and how they should be settled by the public authorities have been brought under regulation, *guaranteeing in this way the right of citizens to address to any public authority and establishing correlatively the obligation of those authorities to respond within the legal term to citizens' petitions*.

The right of a person aggrieved by a public authority ensures the constitutional guarantees of a citizen who, having been aggrieved with regard to his rights or a legitimate interest by a Romanian public authority, irrespective of the authority concerned, through an administrative act or by the non-settlement of a request within the time limit provided by law, may request and is granted legal protection through his fundamental right to obtain the recognition of the claimed right or legitimate interest, the annulment of the act and the reparation of damage.

The person aggrieved by a public authority has the guarantee of legal protection provided by the constitutional provision, irrespective of the public authority which aggrieved that person, and to that end the Constitutional Court of Romania held that "*Article 2 para. (1) letter b) of the Law of Administrative Dispute 554/2004 defines the «public authority» as being any of the bodies of the state or of its administrative-territorial units which acts, within a regime of public power, to satisfy a legitimate public interest."*[71]

In our opinion, with the *"interdependence with the right to good administration consecrated at European level by the Charter of the Fundamental Rights of the European Union, there are at national level, under the aegis of fundamental rights, inscribed in texts of a higher legal values, the right of petition and the right of a person aggrieved by a public authority."*[72]

At the same time, there is also a provision at constitutional level for citizens' protection in case of dame caused by miscarriages of justice. The right of a person aggrieved by miscarriages of justice to take action against the state for recovering the damage suffered is so ensured. The magistrates who acted in bad faith or serious neglect in the course of their duties are in turn liable in relation to the state for the damage caused to aggrieved persons.

5. Conclusions

In our opinion, the right of petition and the right of a person aggrieved by a public authority, known in the doctrine as rights-guarantees, are rights that ensure the good administration by the public authorities for and to the benefit of citizens. Therefore, being granted as fundamental rights, they serve as basis and foundation for the legal protection of all fundamental human rights.

The right of petition ensures and guarantees the right of any citizen to petition and, correlatively, the obligation of the public authorities to respond to that petition within the terms and in the conditions stipulated by the organic law. Depending on the type of petition, the legislator provided for various ways of settlement.

The right of petition is a fundamental citizen right which grants *a right to demand and to make requests before the authorities of the state*. This right to demand, being an essential right, warrants the existence and the observance of all other fundamental citizen rights and ensures the good administration of the state for the benefit of its citizens. The right of petition guarantees the citizens' civil liberties.

The right of a person aggrieved by a public authority ensures, generally, the protection of all fundamental citizen rights and, particularly, the protection of good administration.

The right of a person aggrieved by a public authority ensures the constitutional guarantees of the citizen who, having been aggrieved with regard to his rights or a legitimate interest by a Romanian public authority, irrespective of the authority concerned, through an administrative act or by the non-settlement of a request within the time limit provided by law, may request and is granted legal protection through his fundamental right to obtain the recognition of the claimed right or legitimate interest, the annulment of the act and the reparation of damage.

The right of a person aggrieved by a public authority, together with the right of petition, previously analysed by this study, form, according to the Romanian doctrine, the class of rights-guarantees.

The rights-guarantees ensure the protection of the manifestations of the citizens' will in relation to public authorities and also of other rights, freedoms and citizen interests, thus ensuring the good administration of the state to the benefit of its citizens.

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[71] Decision of the Constitutional Court no. 889/16.12.2015, published in the Official Gazette of Romania no. 123 of 17.02.2016.

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