

# MINISTERIAL LIABILITY IN THE ROMANIAN CONSTITUTIONAL SYSTEM

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## Abstract

*What seems relevant to us for highlighting in this study is the approach of the ministerial liability within the Romanian constitutional and legal system starting with the first document of constitutional value, namely the Developing Statute of the Paris Convention of 1858 until today, that is the Constitution of Romania, revised in 2003 and republished. Having in view that this is a generous study topic covering over 150 years of constitutional and legal evolution of ministerial liability in Romania, it is necessary to specify from the very beginning the need of a diachronic approach of this topic by identifying all Romanian Constitutions that have regulated the constitutional system during this period of time. Moreover, we have to specify that, during this period of time, Romania has experienced several forms of governance, namely monarchy, people's republic, socialist republic and semi-presidential republic. With this approach, the proposed study opens a complex and complete yet not exhaustive vision in the current scope of the ministerial liability. It is also the reason why the study begins with preliminary considerations in which the terminology used in the content of the study is justified. Following a key-scheme, there are successively examined the two major parts of the study, namely the general theory regarding the concepts of ministerial responsibility and liability and the Romanian constitutional, legal and doctrinaire milestones of the ministerial liability.*

**Keywords:** *liability, responsibility, constitution, statute, monarchy, republic.*

## 1. Introduction

The object of the scientific undertaking shall be circumscribed to the scientific analysis of its two major parts, namely: 1. responsibility and liability – the general theory; 2. Romanian constitutional, legal and doctrinaire milestones of the ministerial liability, which cover, in a doctrinaire, constitutional and legal approach, the scope of the study regarding the ministerial liability within the Romanian constitutional system.

In our opinion, the field under analysis is important for the constitutional doctrine, for the doctrine of Administrative Law and for the general theories of Law, because with this scientific undertaking, we intend to establish, through a diachronic and selective approach, a complex and complete yet not exhaustive reflection of the entire current scope of the ministerial liability. In order to entirely yet not exhaustively cover the scope of study, the relevant preliminary specifications shall be followed by the theorisation of the concepts of liability and responsibility from the point of view of the doctrines of the general theory of Law. This topic of the ministerial liability has been addressed in accordance with a logical scheme of the analysis of the contributions of Romanian and foreign authors in the field of the general theory of Law and with the contribution of the author and of other authors to the theorisation of the ministerial liability starting with the first document of constitutional value of 1858 until today.

From the point of view of the integral yet not exhaustive coverage of the scope of ministerial liability, a logical scheme has been introduced, regarding the diachronic and selective approach of the evolution of constitutional regulations on ministerial liability, including the

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indication of government forms specific to the Romanian State for each Constitution enacted in accordance with the particularities of each form of governance.

With this approach, we intend to identify the theoretical, constitutional and legal sources of Law regarding the ministerial liability within the Romanian constitutional system.

Even if the ministerial liability turns back to the enactment of the first Romanian Constitutions, the theoretical interest in resuming it results from the fact that, in the already existing dedicated literature, some theoretical aspects of the ministerial liability have not always been paid due attention.

Moreover, in the relevant literature under consideration, in our opinion, the complex and complete yet not exhaustive reflection of the entire Romanian constitutional evolution of the ministerial liability is not examined in a diachronic approach.

In addition, the study turns into a comparative value the evolution of constitutional and legal regulations in a diachronic approach regarding the ministerial liability, specific to the successive forms of governance covered by the Romanian State, namely monarchy, people's republic, socialist republic and semi-presidential republic.

## 2. Responsibility and liability – The general theory

### 2.1. Preliminary considerations

At the beginning of this study, some preliminary specifications appear as being necessary, given the fact that summarising the normative content of Art. 109 of the Romanian Constitution, as republished<sup>1</sup>, established by the constituents, is entitled *Liability of the Members of Government*, and the same Art. 109 para. (3) includes the following specification: The cases of liability and the penalties applicable to the Members of Government are regulated by a law on ministerial liability. In our opinion, some terminological specifications are necessary as concerns the two terms, namely *responsibility* and *liability*.

### 2.2. Concept of responsibility

2.2.1. Addressed at general level by the Explanatory Dictionary of Romanian Language<sup>2</sup>, the term „responsibility” has the following meanings: *the obligation to be responsible /accountable for something; conscience and responsibility; task, responsibility assumed by somebody*.

2.2.2. Addressing it from the point of view of the general theory of Law<sup>3</sup>, we find the term “responsibility” examined as a fundamental principle of Law.

In supporting this theory, responsibility is regarded as a social phenomenon; *it expresses an action of commitment of the individual in the process of social integration*. Being closely related to a person's action, *responsibility appears as being intimately correlated with the ruling system*.

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<sup>1</sup>\*\*\* The Constitution of Romania, as revised in 2003, was published in the Official Gazette of Romania, Part I, No. 767, of the 31st of October 2003.

<sup>2</sup> Vasile Breban, *A Small Dictionary of Romanian Language*, (Bucharest: Enciclopedica, 1997), 568.

<sup>3</sup> Nicolae Popa, *The General Theory of Law*, (Bucharest: Actami, 1998), 123-125. The author defines the Law as being the assembly of rules assured and guaranteed by the State, aimed to organise and discipline the human behaviour in the main relations within the society, in an environment specific to the manifestation of the co-existence of freedoms, defence of essential human rights and establishment of the spirit of justice.

Although traditionally *the concept of responsibility* has been placed absolutely *in the area of Morals*, more recent research studies highlight the need of outlining this concept also in the area of Law.

It is also specified that social responsibility appears under various forms: *moral, religious, political, cultural, juridical responsibility*.

Starting from the idea that the *Law should not be regarded and assessed only from the point of view of the possibilities its has to intervene post festum, in the area of the bad things already done – a moment when a penalty is imposed, the author mentions that it has the possibility, through the content of its prescriptions, to contribute to the establishment of a cultural attitude of the individual towards the law, an attitude that presupposes a concern assumed for the integrity of social values defended by legal ways, which implies the phenomenon of responsibility*.

2.2.3. Addressing it also from *the point of view of the general theory of Law*<sup>4</sup>, we mention that the term “*responsibility*” is examined as a *social phenomenon* and as a *fundamental principle of Law*. In author’s opinion, the responsibility *appears as a social phenomenon*, since it expresses an action of commitment of the individual in the context of social relations and, eventually, *responsibility is assuming liability* for the outcome of the social action of a person.

Starting from these considerations, responsibility is defined as a fundamental principle of Law, which should be understood as being *the conscious linking of the individual to the values and norms of the society, because the degree of responsibility ultimately indicates the status of legality in a State and it is closely related to the overall progress of the society*. In addition, the author specifies that *the law may create the feeling of responsibility as a state of mind in the conscience of target individuals*.

2.2.4. Analysing the idea of responsibility from *the point of view of the positive Law*<sup>5</sup>.

As concerns the positive Law, they specify that, as it is usually understood, it comprises rules alleged as being Law, even when they do not always actually have this capacity. *These rules hence show what the target persons are entitled to do, or not*. Human actions are assessed from the point of view of the Justice. Juridical, general or individual rules are thus established. Their peculiarity is that *they do not automatically impose themselves as a law of the nature, they are breakable*; they therefore presuppose the character of rational beings of the target individuals and, consequently, their moral freedom.

Starting from these rational notions, they specify that the *idea of person* is thus established, in the form of a specific reality, to whom rights and obligations can be assigned.

*The idea of subjective Law* cannot be conceived further *than being correlative to the idea of obligation, a person’s right meaning only the obligation of other person(s) to observe it, and a person’s obligation means only the right of other person(s) to demand its observance. In its turn, the idea of obligations leads to the idea of responsibility*. Consequently, a right or an obligation includes the generic idea of object of a provision.

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<sup>4</sup> Ion Dogaru, *The General Theory of Law*, (Craiova: Sitech, 1998), 121.

<sup>5</sup> Mircea Djuvara, *Rational Law, Sources and Positive Law*, (Bucharest: ALL, 1995), 502-504. The author also specifies: the reasoning of the positive Law therefore appears in the form of a discursive thinking, which uses all special logical categories of the rational Law; these *categories derive from the ruling character of the logical idea of Justice*.

2.2.5. Analysing the idea of responsibility from the point of view of the pure theory of Law<sup>6</sup>.

We notice that the author examines *the responsibility* from the point of view of *the relation between juridical obligation and responsibility*, which, in our opinion coincides with the notion of *responsibility according to the Romanian Law*.

From the point of view of the pure theory of Law, the author *examines the concept of responsibility in close correlation with the juridical obligation*. This correlation is based on the idea that *the individuals are obliged to the conduct prescribed by the social order*. In other words, an individual *has the obligation to adopt a certain conduct* when it is prescribed by the social order. Saying that the conduct is prescribed, and saying that *an individual is compelled to such a conduct*, and that *s/he is compelled to behave that way*, these are synonymous expressions. It comes out that, since the juridical order is a social order, *the conduct to which an individual is compelled from juridical point of view is a conduct that must take place*, directly or indirectly in relation to another individual.

We are probably used to separate the juridical rule from the juridical obligation, and say that *a rule establishes a juridical obligation*. But we must understand well that *the juridical obligation related to a certain conduct, far from being a juridical standard differing from the juridical rule imposing that conduct, is that juridical rule itself*.

The statement according to which *an individual is obliged from juridical point of view to a certain conduct* is identical with the statement according to which *a rule prescribes a defined conduct for a certain individual*. In addition, the juridical obligation has a general character as well as an individual character, just like the identical juridical rule.

2.2.6. Turning into value the above-mentioned issues, we retain the following components of the concept of responsibility, which we regard as essential in covering the scope of its content:

a) the concept of responsibility is studied, as it comes out from the issues presented above, from the general theory of Law, the theory of positive Law and the pure theory of Law.

b) the notion of responsibility is addressed as a fundamental principle of Law. However, starting from the premise that the Constitutional Law is a one of the branches of the unitary Romanian Law, as a main branch of the unitary Romanian Law, in our opinion, we can address the notion of *responsibility as a general principle of constitutional rank* established by the fundamental law of Romania. We support this analysis with the provisions of Art. 1 para. (5) of the Constitution of Romania, as republished, which proclaims: *In Romania, observing the Constitution, its supremacy and the laws is compulsory*. We have to mention that this general principle was introduced in the content of the fundamental law after the revision of 2003.

c) starting from the *definition of positive Law, which comprises all regulations in force within a State*, and from the *relation between the juridical obligation and the responsibility* established by positive Law, and mentioned above.

d) from the point of view of the general theory of Law, positive Law and pure theory of Law, the subject of Law is the subject of a juridical obligation or the subject of law. In this approach, it comes out that *a subject of law can only be a person entitled to rights and obligations*.

e) we will define the *responsibility as a general principle of constitutional rank, according to which observing the Constitution and all regulations in force in Romania is an obligation for all subjects of law, individuals and public authorities*.

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<sup>6</sup> Hans Kelsen, *Théorie pure du droit*, (Paris: Dalloz, 1962), 157-170.

### 2.3. The concept of liability

2.3.1. Addressed at general level by the Explanatory Dictionary of Romanian Language<sup>7</sup>, the term “responsibility” has the following meanings: *a) the fact of being responsible; responsibility; the obligation to account (morally or materially) for the fulfilment or failure to fulfil actions. b) a consequence of the intentional failure to fulfil an obligation.*

2.3.2. Addressing it *from the point of view of the general theory of Law*<sup>8</sup>, we find that the notion of *liability* is examined *in terms of juridical liability*.

Starting from the idea that *the Law could not act before the dangerous fact is done*, the author mentions the following: *in order to link the functioning of juridical liability*, as an institution specific to the Law, to the general purposes of the juridical system, there must be a belief that the law – the right law, the fair law - *may create the feeling of responsibility in the conscience of its targets, as a state of mind.*

At the same time however, the lawmaker pays attention every time also to the *possibility of breaching the rule by non-conform conduits*. Through his fact, the author specifies, *the person who breaches the provisions of juridical rules touches the rule of law, s/he disturbs the good and normal development of social relations, s/he affects the legitimate rights and interests of his community members, s/he endangers the co-existence of freedoms and social balance.*

Since those who break the rule of law can only be human beings, these are the reasons why they must be liable.

In this regard, the focus is put on penalty, as a reparatory measure. From this point of view, the author specifies that *the juridical responsibility is a juridical constriction relation, and the penalty is the object of this relation.*

2.3.3. Addressing it also *from the point of view of the general theory of Law*<sup>9</sup>, we notice that the notion of responsibility is examined in terms of juridical liability. The author highlights the fact that *responsibility in general and juridical liability in particular can only be understood when the individual is in a conscious relation with the values and norms of society since, eventually, the status of legality itself is a reflection of the degree of her/his liability.*

Underlining the fact that *juridical liability and penalty* are two faces of the same social phenomenon, they are different because the first – *the juridical liability* – is the juridical framework for the latter – *the penalty*. It is also considered that *the functioning of juridical liability*, as an institution specific to the Law, and the correlation of this institution with the general scope of the juridical system, are closely related to the belief that the law is right, it is fair.

2.3.4. Addressing it *from the point of view of the positive Law*<sup>10</sup>, we retain that, in juridical terms, in our opinion, the author has in view the following hypotheses:

a) starting from the *notion of Law*, they consider that its rules *essentially comprise the idea of right and obligation*. Not all the rules of law so defined are included, in practice, in the positive Law. *The positive Law, namely the applied law*, comprises a very limited number of rules, as compared to all possibilities of juridical rules, which exist at a certain moment.

b) as concerns the *juridical relation*, we retain the following remarks: 1) among persons, by juridical action, regarding a certain object, *a certain specific relation is established*. This relation is essential and it is different from the other elements of the relationship. *The entire Law is therefore built on obligations, which are its simplest elements*. 2) since the juridical relation is normative, it represents a commandment, namely an order, moreover, they think all legal

<sup>7</sup> Vasile Breban, *op. cit.* 551.

<sup>8</sup> Nicolae Popa, *op. cit.* 323-326.

<sup>9</sup> Ion Dogaru, *op. cit.* 267-269.

<sup>10</sup> Mircea Djuvara, *op. cit.* 40-42, 213-224, 302.

provisions represent such a commandment. 3) the juridical relation implies the idea of obligation. 4) the juridical commandment is breakable. 5) as concerns the right-obligation relation, they think it is absolute. 6) the idea of juridical relation leads to the idea of penalty. The penalty is applied by the State. 7) the juridical penalty is the second element of the positive Law.

2.3.5. Addressing it from *the point of view of the pure theory of Law*<sup>11</sup>, we notice that the author examines *the juridical responsibility in terms of relation between juridical obligation and penalty*, which, in our opinion, coincides with *juridical liability in the Romanian Law*.

If we conceive the *Law as a restrictive order*, we cannot say that *a given conduct is objectively prescribed by Law* and that it can therefore be regarded as *being the object of a juridical obligation*, unless a juridical rule *attaches to the contrary conduct the penalty of a restrictive action*. Starting from the idea that *juridical obligation is nothing but the positive rule that prescribes individual's conduct*, by *attaching a penalty to the contrary conduct*, under these circumstances, the individual is *compelled* from juridical point of view *to the conduct so prescribed*, even when the representation of the rule does not *create in him/her any kind of impulse* towards that conduct.

Moreover, to the extent to which the positive Law consecrates *the principle according to which ignoring the law makes no exception as concerns the penalty established by Law*, individual's obligation exists even if s/he has no idea about the juridical rule aimed to oblige her/him, in other words, if s/he does not know it. In this context, the responsibility is for guilt and for outcome.

2.3.6. Turning into value the above paragraphs, we retain the following components of the concept of liability, which we regard as essential in covering the scope of its content:

a) as mentioned above: the lawmaker pays every time attention also to *the possibility of breaking the rule by non-compliant conducts*. As the author specifies, *the person who breaches the provisions of juridical rules by her/his action affects the rule of law, disturbs the good and normal existence of social relationships, affects legitimate rights and interests of the people around her/him, endangers the co-existence of freedoms and the social balance*.

b) furthermore: if we conceive *the Law as a restrictive order*, we cannot say that *agiven conduct is objectively prescribed de jure*, and that it therefore *be regarded as being the object of a juridical obligation*, unless a juridical rule *attaches the penalty of a restrictive action to the contrary conduct*. We start from the idea that *juridical obligation is nothing but the positive rule that prescribes individual's conduct by attaching a penalty to the contrary conduct*.

### 3. Romanian constitutional, legal and doctrinaire milestones of ministerial liability

#### 3.1. *The developing statute of the Convention of 7/19 August 1858*<sup>12</sup>

From the systematic examination of the normative content of the Statute, we retain the following issues for this study: a) the Statute, in our opinion, can be regarded as a Constitution, given the provisions of Art. XVII, which stipulate that: All public officers, with no exception, upon their designation, *have to swear observance of the Constitution and laws of the country and faith to the God*. b) The Statute includes no provision on ministerial liability.

<sup>11</sup> Hans Kelsen, op. cit. 157-170.

<sup>12</sup> Ioan Muraru and Gheorghe Iancu, *Romanin Constitutions*, Texts. Notes. A comparative presentation, (Bucharest: Actami, 2000), 7-14.

### 3.2. Constitution of Romania of 1866<sup>13</sup>

We have to mention right from the beginning that the Fundamental Law of Belgium of 1831 was a source of inspiration for the Constitution of Romania of 1866.

The systematic examination of the constitutional text reveals that the core of the ministerial liability is found in the normative content of the following articles:

a) Art. 92: *The person of the King is inviolable. His Ministers are accountable.* No act of the King can be enforced unless it is counter-signed by a Minister who consequently actually becomes liable for that act.

b) Art. 100: *In no case can a verbal or written order of the King exempt a Minister from liability.*

c) Art. 101: *Each of the two Assemblies as well as the King are entitled to accuse the Ministers and refer them to the High Court of Cassation and Justice, who is the only one entitled to judge them in united Sections, except what will be stipulated by laws as concerns the exercise of civil action and the offences committed by Ministers beyond the exercise of their powers. Charges against the Ministers can only be pressed by a majority of two thirds of the present Members. A law introduced in the first session shall determine the cases of responsibility, the penalties applicable to the Ministers and the manner of prosecution against them, both as concerns the accusation admitted by the national representatives and as concerns the prosecution by the injured parties. The accusation initiated by the national representatives against the Ministers shall support itself. The prosecution initiated by the King shall be conducted through the public ministry.*

d) Art. 102: *Until the law mentioned in the previous Article is made, The High Court of Cassation and Justice has the power to characterise the offence and determine the penalty.* However, the penalty cannot exceed detention, without prejudicing the special cases indicated by the penal laws.

e) Art. 103: *The King can only forgive or reduce the penalty decided for Ministers by the High Court of Cassation and Justice after the request of the Assembly who pressed charges.*

*Turning into value the constitutional provisions mentioned in the Articles above, we retain mainly the following constitutional rules on ministerial liability:*

a) *by proclaiming the inviolability of the person of the King, the liability is transferred to his Ministers, through the counter-signing of the official acts issued by him, acts that obtain a compulsory juridical power by being counter-signed.*

b) *verbal or written order of the King cannot exempt a Minister from liability.*

c) *either the King or the two Assemblies have the right to press charges against Ministers. Charges are pressed by vote of the 2/3 majority of the number of members of the two Assemblies. The prosecution initiated by the King shall be conducted through the public ministry. The High Court of Cassation and Justice has the competence to judge in reunited Sections.*

d) *A law introduced in the first session shall determine the cases of responsibility, the penalties applicable to the Ministers and the manner of prosecution against them.*

e) *The King can only forgive or reduce the penalty decided for Ministers by the High Court of Cassation and Justice after the request of the Assembly who pressed charges.*

*Regarding the ministerial responsibility, Professor Constantin Dissescu<sup>14</sup>, contemporary with the Constitution of Romania of 1866, specifies the following:*

<sup>13</sup> *Ibidem*, 31-59.

<sup>14</sup> Constantin Dissescu, *Constitutional Law*. (Bucharest: The printing house of SOCEC & Co. Bookstore, LTD, 1915), 826-842.

a) Ministerial responsibility is one of the bases of our constitutional system; it guarantees *King's inviolability*.

b) Ministerial responsibility is legitimate, right and necessary. It is *legitimate*, because there is nothing more rightful than the responsibility of each person for her/his actions within the State. The positive law, the entire social and political organisation is based on this idea, according to which the individual is free, and *the principle of human freedom leads us to the principle of responsibility*. It is *right*, because nobody can be compelled to be a Minister unwillingly. Since a minister counter-signs an act, s/he therefore acknowledges that s/he understands the utility and legality of that act. It is *isnecessary*, because only in this way we can ensure observance of the laws and Constitution. It is a natural fact against which nobody can complain.

### 3.2.1. Law of the 2<sup>nd</sup> of May 1879 on ministerial responsibility<sup>15</sup>

From the systematic examination of the normative content of the law, we retain mainly the following issues: a) the law comprises three parts: responsibility, judgment procedure, and rules on prescription. b) the first part, entitled *Responsibility* establishes the actions and facts for which the Ministers are responsible while exercising their mandate. According to the law, the responsibility can have a penal, civil or delictual nature. c) the judgement procedure comprises mainly the crimes and offences committed by a Minister and the previous authorisation of the Chambers and, if applicable, also of the King, for referral to the court and initiation of the penal instruction and preventive detention, also for civil liability towards the State. d) as concerns the prescriptions, the Common Law provisions are maintained.

### 3.3. Constitution of Romania of 1923<sup>16</sup>

The systematic examination of the constitutional text reveals that the core of ministerial liability is found in the normative content of the following articles:

a) Art. 87: The person of the King is *inviolable*. *His Ministers are accountable*. No act of the King *can be enforced unless it is counter-signed by a Minister who consequently actually becomes liable for that act*.

b) Art. 97: In no case *can a verbal or written order of the King exempt a Minister from liability*.

c) Art. 98: *Each of the two Assemblies as well as the King are entitled to request Ministers' prosecution and refer them to the High Court of Cassation and Justice*, who is the only one entitled to judge them in united Sections, except what will be stipulated by laws as concerns the exercise of civil action of the injured party and as concerns the crimes and offences committed by Ministers beyond the exercise of their powers. *Charges against Ministers by the Lawmaking Bodies* can only be pressed by a majority of two thirds of the present Members. The instruction shall be conducted by a commission of the High Court of Cassation, consisting of five members randomly drawn in united Sections. This commission has also the power to qualify the facts and decide prosecution or non-prosecution. The defence before the High Court of Cassation and Justice *shall be conducted through the public ministry*. The law on ministerial responsibility determines the cases of liability and the penalties applicable to the Ministers.

d) Art. 99: *Any party affected by a decree or order signed or counter-signed by a Minister, which breaches an express text of the Constitution or of a law, may demand financial*

<sup>15\*\*\*</sup> Law of the 2nd of May 1879 on ministerial responsibility was published in „The Official Gazette - Journal of Romania”, No. 98 of the 2nd of May 1879.

<sup>16</sup> Ioan Muraru and Gheorghe Iancu, op. cit., 63-91.

*compensations from the State, in accordance with the Common Law, for the prejudice suffered.* Either during the judgment or after the establishment of decision, the Minister may be summoned before the ordinary courts, upon the request of the State, following the vote of one of the Lawmaking Bodies, *for civil liability for the damage alleged or suffered by the State.* Minister's illegal action does not exempt from joint liability the public officer who counter-signed, unless s/he had warned the Minister in writing.

*Turning into value the constitutional provisions mentioned in the Articles above, we retain mainly the following constitutional rules on ministerial liability:*

a) the ministerial liability itself is comprised in Articles 98 and 99 of the Constitution of Romania of 1923, which, in our opinion, have undergone essential changes, as compared to Articles 101, 102 and 103 of the Constitution of Romania of 1866. These changes are as follows:

b) according to Art. 98, the penal instruction shall be conducted by a commission of the High Court of Cassation, consisting of five members randomly drawn in united Sections. This commission has also the power to qualify the facts and decide prosecution or non-prosecution. In addition, the defence before the High Court of Cassation and Justice *shall be conducted through the public ministry.*

c) in accordance with Art. 99, *any party affected by a decree or order signed or counter-signed by a Minister, which breaches an express text of the Constitution or of a law, may demand financial compensations from the State, in accordance with the Common Law, for the prejudice suffered.* Under these circumstances, either during the judgment or after the establishment of decision, the Minister may be summoned before the ordinary courts, upon the request of the State, following the vote of one of the Lawmaking Bodies, *for civil liability for the damage alleged or suffered by the State.*

d) as concerns the joint civil liability, according to the same Article, Minister's illegal action does not exempt from joint liability the public officer who counter-signed, unless s/he had warned the Minister in writing.

### **3.4. Constitution of Romania of 1938<sup>17</sup>**

The systematic examination of the constitutional text reveals that the core of ministerial liability is found in the normative content of the following articles:

a) Art. 44: The person of the King is *inviolable. His Ministers are accountable.* The Acts of State of the King shall be counter-signed by a Minister who *consequently becomes liable for those acts. The exception is the designation of the Prime Minister, which shall not be counter-signed.*

b) Art. 70: The King and any Assembly *may request Ministers' prosecution and referral to the High Court of Cassation and Justice,* who is the only one entitled to judge them in united sections. As concerns *the exercise of civil action by the injured party* and as concerns the crimes and offences committed by them beyond the exercise of their powers, they are subject to the Common Law rules. *Lawmaking Bodies' decision to prosecute Ministers shall be made by a majority of two thirds of the present members. The instruction shall be conducted by a commission of the High Court of Cassation and Justice, consisting of five members randomly drawn in united sections.* This commission has also the power to qualify the facts and decide prosecution or non-prosecution. *The defence before the High Court of Cassation and Justice shall be conducted by the Public Ministry.* The Law on Ministerial Responsibility determines the

<sup>17</sup> Ioan Muraru and Gheorghe Iancu, op. cit. 65-118.

cases of liability and the penalties applicable to the Ministers. *Ministers of Justice who have left the office* cannot act as lawyers for one year. *Out-of-office Ministers* cannot be members of the Managing Boards of a company with which they signed contracts during the next three years.

c) Art. 71: *Any party whose rights have been affected by a decree or order signed by a Minister, by breaching an express text of the Constitution or of the laws in force, may demand financial compensations from the State, in accordance with the Common Law, for the prejudice suffered.*

*Turning into value the constitutional provisions mentioned in the Articles above, we retain mainly the following constitutional rules on ministerial liability, which have undergone changes, as compared to the similar regulations in the Constitution of Romania of 1938:*

a) according to Art. 44, the designation of the Prime Minister by the King is exempted from being counter-signed.

b) there are new rules included in the content of Art. 70, as follows:

b.1. as concerns the exercise of civil action by the injured party and as concerns the crimes and offences committed by them beyond the exercise of their powers, they are subject to the Common Law rules. b.2.) Ministers of Justice who have left the office cannot act as lawyers for one year. b.3.) Out-of-office Ministers cannot be members of the Managing Boards of a company with which they signed contracts during the next three years.

c) a new rule is included in the content of Art. 71, according to which: *Any party whose rights have been affected by a decree or order signed by a Minister, by breaching an express text of the Constitution or of the laws in force, may demand financial compensations from the State, in accordance with the Common Law, for the prejudice suffered.*

### **3.5. Constitutions of the People's Republic of Romania of 1948 and 1952<sup>18</sup>**

The systematic examination of the constitutional texts of the two Constitutions reveals the following: a) the core of ministerial responsibility is found in the normative content of Art. 73 of the Constitution of the People's Republic of Romania of 1948, in the following form: *The Ministers are liable for their penal facts committed while exercising their powers. A special law shall establish the manner of prosecution and judgement for Ministers.* b) The Constitution of the People's Republic of Romania of 1952 does not include constitutional rules on ministerial responsibility.

### **3.6. The Constitution of the Socialist Republic of Romania of 1965, as subsequently re-published<sup>19</sup>**

The systematic examination of the constitutional texts reveals that the ministerial liability was formulated as follows: *The Ministers and the leaders of other central bodies of the State Administration are liable before the Council of Ministers for the activity of the bodies they lead.*

### **3.7. Constitution of Romania of 2003<sup>20</sup>**

The systematic examination of the constitutional text reveals that the core of ministerial liability is found in the normative content of Art. 109, a content summarised under the title *Liability of the Members of Government*. The above-mentioned Article 109 establishes the following three relevant constitutional rules:

<sup>18</sup> Ioan Muraru and Gheorghe Iancu, op. cit., 123-138 și 143-164.

<sup>19</sup> *Ibidem*, 169-198.

<sup>20</sup>\*\*\* The Constitution of Romania, as revised in 2003, was published in the Official Gazette of Romania, Part I, No. 767, of the 31st of October 2003.

*Para. (1)* The Government is politically liable only before the Parliament for their entire activity. Each Member of Government is politically liable together with the other Members for Government's activity and for their actions.

*Para. (2)* Only the Chamber of Deputies, the Senate and the President of Romania are entitled to demand penal prosecution for the Members of Government for facts committed while exercising their powers. When penal prosecution is requested, the President of Romania may order their suspension from office. Referral of a Member of Government leads to her/his suspension from office. Competent for judgement is the High Court of Cassation and Justice.

*Para. (3)* The cases of liability and the penalties applicable to the Members of Government are regulated by a law on ministerial responsibility.

*Turning into value the above-mentioned constitutional provisions, we retain mainly the following constitutional rules regarding the liability of the Members of Government:*

a) *As concerns the constitutional system of political liability*

a.1. we find out that, if the marginal title of the article under analysis is *Liability of the Members of Government*, the content of the text of Art. 109 para. (1) refers to the *political liability of the Government only before the Parliament* for their entire activity. Government's political liability only before the Parliament can be explained by taking into consideration the provisions of Art. 103 para. (3) of the Constitution, according to which „*Government's agenda and list are debated by the Chamber of Deputies and Senate, in a common sitting. The Parliament grants full confidence to the Government by the vote of the majority of Deputies and Senators*”, and of Art. 85 para. (1) of the Constitution, according to which „*the President of Romania designates a candidate for the position of Prime Minister and appoints the Government based on the confidence vote granted by the Parliament*”. We notice that the appointment of the Government by the President of Romania is based on the confidence vote granted by the Parliament.

Also regarding Government's political liability, the second thesis of Art. 109 para. (1) of the Constitution establishes the rule according to which: *Each Member of Government is politically liable jointly with the other Members for Government's activity and actions.*

In our opinion, the joint liability is imposed since, in accordance with the provisions of Art. 103 para. (2) of the Constitution: „*The candidate for the position of Prime Minister, within 10 days after designation, shall demand Parliament's confidence vote for Government's agenda and entire list*”.

a.2. The political liability subsumes also the other manners of parliamentary control established by the Constitution, as part of the relations between Parliament and Government, as concerns: 1). the information provided to the Parliament (Art. 111), 2). The questions, inquiries and simple motions (Art. 112), 3). the censorship motion (Art. 113), 4). the commitment of Government liability (Art. 114).

The most severe penalty, established for Government's political liability, is *dismissal* under the circumstances established by the provisions of Art. 110 para. (2) of the Constitution, according to which: „*The Government is dismissed when the Parliament withdraws the confidence they granted or when the Prime Minister is in one of the cases stipulated at Article 106, except being revoked, or s/he finds it impossible for herself/himself to exert her/his powers for more than 45 days*”.

b) *As concerns the constitutional system of penal liability*

b.1. the constitutional system of penal liability of the Members of Government is established by the normative content of Art. 109 para. (2) thesis I of the Constitution, which, as concerns *the penal liability* of the Members of Government, it specifies that: „*Only the Chamber of Deputies, the Senate and the President of Romania are entitled to request penal prosecution of the Members of Government for the facts committed while exercising their powers*”.

b.2. according to Art. 109 para. (2) thesis II of the Constitution, “*When penal prosecution is requested, the President of Romania may order their suspension from office*”.

b.3. according to Art. 109 para. (2) thesis III of the Constitution, “*Referral to the court of a Member of Government incurs her/his suspension from office*”.

b.4. according to Art. 109 para. (2) thesis IV of the Constitution “*The High Court of Cassation and Justice has the competence for judgement*”.

### 3.7.1. Law 115/1999 – Law on ministerial responsibility<sup>21</sup>

In applying the constitutional provisions comprised in the normative content of Art. 109 para (3), which establishes: “*The cases of liability and the penalties applicable to the Members of Government are regulated by a law on ministerial responsibility*”, the Law 155/1999 was enacted, as amended, republished. The systematic analysis of the normative content of the law reveals that it is structured into four Chapters, from whose content we retain the following selective issues for this study:

a) Chapter I, entitled General Provisions, comprises the following general principles applicable to its entire normative content.

a.1. In our opinion, justified in the second section of the study on responsibility, Art. 1 of the Law consecrates the principle of responsibility, which establishes the following general juridical obligation for Government and its Members: *The Government, in its entirety, and each of its Members are compelled to fulfil their mandate by observing the Constitution and the laws of the country, as well as the Governing Plan accepted by the Parliament.*

This principle is an application and a development of the constitutional principle of responsibility, proclaimed in Art. 1 para (5) of the Constitution of Romania, republished, and it consecrates the following fundamental principle applicable within the Romanian State: „*In Romania, observing the Constitution, its supremacy and the laws is compulsory*”.

As concerns observance of the Constitution and its supremacy, the constitutional doctrine specifies as follows: „*Observance of the Constitution and the other normative rules is a general obligation for all subjects of right, both public authorities and citizens*”<sup>22</sup>.

a.2. enlarging on the constitutional principles from Art. 109 para (1) of the Constitution, it establishes the general principles regarding Government’s political liability in the content of Art. 2, Art. 3 and Art. 4 of the law.

a.3. by extending the responsibility of the Members of Government, in accordance with Art. 5 of the law, a general principle is established, according to which: „*Besides political liability, the Members of Government may be also liable from civil, penalty-related, disciplinary or penal point of view, as appropriate, according to the relevant Common Law, unless this law includes derogatory provisions*”.

a.4. in addition, in the content of Art. 6 of the law, *the understanding of the wording Members of Government* is established.

b) Chapter II of the law establishes the Penal Responsibility of the Members of Government.

c) Chapter III of the law establishes the Procedure for Penal Prosecution and Judgement of the Members of Government.

d) Chapter IV of the law, entitled Final Provisions, establishes additional procedure rules.

<sup>21</sup>\*\*\*Law 115/1999 - Law on ministerial responsibility, republished, in „The Official Gazette of Romania”, Part I, No. 200 of the 23rd of March 2007.

<sup>22</sup> Coordinators Ioan Muraru and Elena Simina Tănăsescu, *The Constitution of Romania, Remarks by articles*, (Bucharest: C.H. Beck, 2008), 18.

#### 4. Conclusions

The main purpose of the study on ministerial liability within the Romanian constitutional and legal system, specific to the forms of governance covered by the Romanian State, namely monarchy, people's republic, socialist republic and semi-presidential republic, has been achieved. The main directions of study for achieving the proposed objective were as follows:

1. Theorisation of the concepts of responsibility and liability from the point of view of the Explanatory Dictionary of Romanian Language and of various branches of Law having as an object of study the above-mentioned concepts. This section comprises two parts.

In the first part of the study, the constitutional regulations containing these two concepts are identified. The first part of the section is dedicated to the theorisation of the concept of responsibility.

The main Romanian and foreign documentation sources used for theorising the concept of responsibility were as follows: the Explanatory Dictionary of Romanian Language, the general theory of Law, the theory of positive Law, and the pure theory of Law.

The Explanatory Dictionary of Romanian Language defines the responsibility as an obligation to be accountable and as a liability assumed by a person. The general theory of Law examines the responsibility as a fundamental principle of Law, which is a social phenomenon that expresses an action of commitment of the individual in the process of social integration. The theory of positive Law examines the responsibility, as it is usually understood, namely as rules indicating what the target persons have the right to do, or not. The pure theory of Law examines the concept of responsibility in close correlation with the juridical obligation. This correlation is based on the idea that the individuals are compelled to have the conduct prescribed by the social order.

The second part of the section is dedicated to the theorisation of the concept of liability, using the same information sources as in the first section. The Explanatory Dictionary of Romanian Language defines the liability as an obligation to account for the fulfilment or failure to fulfil certain actions and as a responsibility. The general theory of Law examines the liability from the point of view of juridical liability.

The theory of positive Law examines the liability by starting from the idea of subjective Law that cannot be further conceived unless it is correlated with the idea of obligation, a person's right meaning only the obligation of other person(s) to observe it. In its turn, the idea of obligations leads to the idea of responsibility.

The pure theory of French Law examines the juridical responsibility from the point of view of the relation between juridical obligation and penalty, which, in our opinion, coincides with the juridical liability in the Romanian Law.

2. The Romanian constitutional, legal and doctrinaire milestones of ministerial liability comprise, in a diachronic and selective approach, the analysis of the entire scope of evolution of the concept of ministerial liability within the Romanian constitutional system.

The second part of this study begins with the identification of regulations on ministerial liability, in the normative content of the first document of constitutional value in Romania, namely the Developing Statute of the Paris Convention of 1858.

Following a pre-set scheme, there are identified all regulations on ministerial liability in the Romanian Constitutions enacted in Romania until nowadays, together with their revisions, as well as in the relevant secondary laws. In addition, the constitutional doctrine related to Romania's constitutional evolution during the mentioned period of time is quoted.

The two parts of the study can be regarded as a contribution to the extension of research studies on ministerial liability within the Romanian constitutional system, which cover over 150 years of constitutional and legal evolution in Romania.

Furthermore, we specify that the above-mentioned study opens a complex and complete yet not exhaustive vision on the area under analysis.

Given the selective approach of the ministerial liability, the key-scheme proposed may be multiplied and extended to other relevant subsequent studies, given the vastness of the area under analysis.

### References

- *Romanian Constitution*, revised in 2003.
- Vasile Breban, *Mic dicționar al limbii române* (București: Enciclopedică, 1997).
- Nicolae Popa, *Teoria generală a dreptului* (București: Actami, 1998).
- Ion Dogaru, *Teoria generală a dreptului* (Craiova: Sitech, 1998).
- Mircea Djuvara, *Drept rațional, izvoare și drept pozitiv* (București: ALL, 1995), 502-504.
- Hans Kelsen, *Théorie pure du droit* (Paris: Dalloz, 1962).
- Ioan Muraru și Gheorghe Iancu, *Constituțiile Române*, Texte. Note. Prezentare comparativă (București: Actami, 2000).