Abstract of the Habilitation Thesis

The Modern and Interdisciplinary Approach of Civil Law and Competition Law

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The present work has been prepared for the submission of the file requesting habilitation in the field of university doctoral studies of Law, specialization Civil Law and Competition Law, with the scope to contribute to the leading of doctoral students in Civil Law and Competition Law, by putting into value my experience of 22 years of research and academic activity.

This habilitation thesis is structured taking into account, on the one hand, the evolution of my career so far, analysed from the perspective of the achievements as researcher, the teaching experience, and the practice experience in law, as wel as the managerial activities, as regards the Section 1 of the thesis, and taking into consideration my objectives for the future research activity, respectively teaching activity, as regards Section 2.

I started the academic activity in 1996, as professor's assistant, then I was a lecturer, currently I am an associate professor, acting uninterruptedly in teaching law at the university level, both in graduate programs (licență) as well as in in-depth studies and professional master programs. At present, I am an associate professor with the Faculty of Law University of Bucharest, Department of Private Law, previously occupying the position of lecturer in law with the same Department.

I grounded my scientific research and the teaching activity at university level on the interdisciplinary, integrative, coherent approach, by putting in light the importance of understanding the fact that civil law and competition law, the two areas of law I follow build instrumental platforms applicable to complex legal situations and, consequently, the research, formation and application endeavours enable added-value by their conjunction and understanding their impact in practice.

I strived to employ scientific research in the paradigm generated by four pillars of tackling it through (i) harmonisation of the tradition and the innovation in the fields of study, (ii) by interdisciplinary analysing, (iii) according to the national specific and the informal trend of globalization of law and (iv) by permanently correlating the scientific activity to the education one.

The academic activities I had were marked by innovation, both by the proposed solutions in the civil law and competition law *de lege lata*, as well as by the solutions found *de lege ferenda*. Still, understanding the law modernisation as an evolutive process that doesn't require the waver of traditional values, but, on the contrary, it puts them into value harmoniously.

Moreover, I conceived my research endeavour having in mind the identification of specific challenges stemmed from the areas of interest and by building a vision that leads to efficient solutions, consistent with the Romanian legal system. The research I led in these areas were powered by the desire that, by the problems raised and by the solutions identified, to inspire further study and divergent thinking both in students master and doctoral students, as well as in theoreticians and practitioners, in general.

Some of the legal issues I analysed enabled bridges between the areas of study.

In brief, the research I conducted in civil law envisaged the theory of obligations and the property related rights.

In a first line of research in the theory of obligations, I reached the conclusion that the closing of contracts represents an issue of paramount importance in contractual law, the modality of formation being predictive both for the contractual performance outcome and for its dynamicity. For the purpose of the research endeavour, I employed the role of the negotiation methodology, by interdisciplinary study and non-legal specialisations, such as behavioural economy and praxeology, but I also searched the implications of competition law in contract formation, by blueprinting a general legal regime for the anomalies in the contract conclusion.

Among the aspects that my research in the contract formation envisaged a central role is played by (i) the function of power negotiation, explaining and enabling the mechanism of conclusion and the common points between the private law and the competition law, by their objectives; (ii) the concept of abuse, by comparing the abuse of power, the abuse of right (specific to the civil law for contract formation, however significantly exceeding the means of abuse clauses, abundantly researched by the

doctrine, without notable results, as it invariably leads to the consumer protection; (iii) the role of standard contracts in the present society and their relationship with the negotiated and mandatory contracts, by relationship with legal instruments put into the use of the first category (unusual clauses, contractual announcements, standard clauses etc.); (iv) the determination of the contractual content, in the context of the innovations introduced by the Civil code that establishes mechanisms of continued formation of the contract, by relating the legal understanding of the contract to the economic understanding; (v) the impact of the monistic regulation regarding civil obligations in regard to the pragmatic differences between the professional and civil contracts; (vi) the integration of contract negotiation in the larger formative process, including other valuation activities on the opportunity of the contract, having consequences on the validity of the contract; (vii) rethinking of the relationship between the principles provided by the law in contract formation and the obligations during the negotiation; (viii) the compatibility of the contract formats in *common law*, frequently used in the Romanian practice of contract conclusion even since the 90ies, with the Romanian law and the consequences of this usage.

The analysis of the performance and extinction of obligations pertained to (i) the challenges in configurating the good-faith in the contract performance, as well as in unfair trading practices; (ii) the integrative understanding of the principles governing the contractual effects; (iii) reconsidering the field of application of the dynamics of obligations, by putting into light the modification elements implied by the formation in stages of the contract (continuous, continued and progressive), as well as some of the sources of obligation extinction (e.g. performance in lieu of payment provided by the special law – *datio in solutum*); (iv) rethinking contractual solidarity (solidarism) in the context of functional and structural dynamics and the Romanian legal provision pertaining to hardship (impreviziune); (v) the foundation of the theory of diffuse obligations as negative limit in the configuration of obligations; (vi) the corroboration challenges regarding the contract assignment, the receivable assignment and the debt assignment, especially with a view to the inconsistency in the protection of the assigned party; (vii) the role of the taxonomy in legal personal subrogation, to its applications; (viii) the incorporation of the transmissive and transformative traits in case of debt assignment and its implications for cohesion of legislation and practice; (ix) the evolution of joint and several obligations, especially in regard to the compatibility *de*

lege lata of the controversy pertaining to the obligation *in solidum* in the Romanian civil law system and its possible applications; (x) the explanation of the peculiar mechanism of performance in lieu payment (*datio in solutum*) by comparison to the general law; (xi) the configuration of a uniform system regarding the modality the obligations of contractual nature are extinguished; (xii) the control of prices in contracts by instruments of civil law and competition law; (xiii) tackling the consistency challenges of obligation extinguishment, such as the debt waver and compensation of debts; (xiv) the usage of negotiation as alternative dispute resolution solution and obligation amendment.

In another research line, I analysed the tort from the perspective of (i) general law, (ii) by granting special attention to the relationship between the illicit deed and the fault, including from the comparative law perspective, (iii) the specificity of the liability for contract formation, (iv) the particularity of *malpraxis* tort cases and (v) the especial tort rules for antitrust and (vi) unfair trading practices; (vii) including the procedural perspective on the matter, considering the necessity of harmonisation of the substantive and procedural rules, especially pertaining to admission and exhibition of evidence, and the challenges in continental law in class actions, (viii) the identification of equivalent instruments in the Romanian law of the *common law*'s *disgorgement of profits*; (ix) the challenges in the limitation of waver of liability, especially in contracts.

In property related rights, the main directions of study I conducted pertained to (i) the correlation of legislation on property legal regime, in relation to the application of law in time, especially in regard to the property abusively expropriated by the communist regime; (ii) the synthesis of the property related rights; (iii) the claim of movable properties.

In the competition law field, many of the research activities pertained to the Centre for Competition Law Studies, of the Faculty of Law, University of Bucharest, to which I am cofounder and codirector and which enabled my individual research as well as in the capacity of team coordinator.

The research I conducted in competition law pertained to all the areas of this law field, in an integrative fashion, not only (i) by employing the rules of civil law and competition law but also (ii) by corroborating national law, EU law and American antitrust law and (iii) by rethinking the fundamentals of competition law, so that it enables the consistent explanation of the main institutions thereof. Moreover, especially

in designing the works featuring the education process, I followed the simplification of the notions the competition law operates with and creating the instruments challenging the thinking or the reader in regard to difficult and controversy matters, as well as the practical approach.

The most representatives contributions I brought to competition law are (i) the „democratisation" of competition law by simplifying its presentation and fundamentals, an imperative of the current stage of application, drastically undervalued; (ii) the reconfiguration of the application domain of competition law, taking into account a new definition of the competition relationship that is mandatory to be specific, not generic; (iii) the unitary approach of the theory of competition law, as the law filed applicable exclusively to the illegalities in market relations, and not to the economic activities, in general; (iv) the identification of the principles and the addition to the legal functions of competition law, to the ones already observed by the doctrine; (v) the structuring of competition law domain, according to the source of competition restriction by granting special attention to the interaction with the intellectual property law and the distinction between three types of restriction, voluntary, legal and implied, the last one not being previously explored by the doctrine; (vi) the role of convergence instruments de in the consistent application of EU law and the challenges to the harmonious application; (vii) the relationship between the Romanian competition law and the EU competition law and the American sources of the two.

In the antitrust law, my research achievements include (i) taking and evolving the economy theory in antitrust law that allows the efficient and adaptive application enabling the mitigation of false negative and false positive application of law; (ii) the identification of cases unregulated at national or international level and the explanation of how this influences the qualification of the illicit; (iii) the differences in legal regime between the horizontal and vertical illicit agreements; (iv) the role of establishing the relevant market in anticompetitive agreements, considering the paradigm that the deeds are committed in relation with the markets; (v) the relationship between the unusual (surprising) clauses and certain illicit behaviour; (vi) the correlation between the abuse of dominant position and the qualifications made by the civil law; (vii) the study for the first time in the Romanian literature of the criminal liability for anticompetitive behaviour; (viii) the challenges raised by the action for damages, including the class action; (ix) the identification of the mitigation criteria in false

negative and false positive administrative liability; (x) the legal regime applicable to the antitrust investigation procedures, including (xi) the take on the observance of the fundamental rights provided by the European Convention of Human Rights (e.g. reasonable time, protection during dawn raids).

In State aid matters, my directions of study concerned (i) the structuring of the State aid measure; (ii) the correlation between State aid measures and antitrust law; (iii) the role of State aid in public procurement procedures; (iv) the necessity of reforming the State aid legislation, in order to harmonise the regulation at EU level of this legal institution with the market relations that in the recent period have become global, by means of simplified communications.

My main research projects concerning unfair trading practices contributed to (i) redefining the unfair practices by correcting some categories traditionally endorsed by the doctrine (market disorganisation), (ii) restructuring the typology of the unfair practices into focused practices and diffuse practices, typology designed to clarify the scope of the protection rules, (iii) the role of the illicit conduct according to other fields of law (criminal law, administrative law, intellectual property law, fiscal law) in unfair competition regulations, (iv) the deficiencies in the recent reform of unfair trading practices and their jurisprudential implications.

I have harmoniously united the research and teaching activity in civil law, for over 20 years, uninterruptedly, and in competition law, for 15 years in a row. This coordination in education and theory of law served me as motivation, in identifying the most efficient teaching instruments, the university textbooks I wrote being structured in order to ensure accessibility, also containing references and practical exercises and urging the reader to further analyse the matter, by questions leading to divergent thinking and challenging to initiate research.

The research I conducted enabled introducing in the curricula of new disciplines, some of them being one of a kind in the education in law in Romania (e.g. the discipline „Contract Negotiation"). Teaching in different years of studies in the graduate program and the master programs, remote learning, post-university programs, as well as teaching in foreign languages enabled the adaptability and innovation in schooling experience and supported the preparation of the works I have published.

I valued the two activities in order to coordinate research of students, master students, doctoral students and the mentoring on practitioners (especially, advocacy

and magistracy). By means of example, I founded 10 years ago the Scientific Session of the Students and Master Students of the Faculty of Law, University of Bucharest, thereby renewing and improving, after a long absence, a good tradition the faculty had before 1989. This platform is representative for my implication in the managerial activity of coordinating student research, including by the fact that I organised several editions, commencing with the first one.

By the objectives I intend for the future, I deem to continue the hard and creative work in my research activity, including projects such as (i) continuing the study of the theory of obligations and preparing a treatise on the matter; (ii) the preparation of a manual presenting the civil law in an accessible and integrative fashion; (iii) the preparation of a commented collection of landmark case-law in competition law; (iv) the development of an ample team study regarding the good-faith and unfair trading practices; (v) the drafting of an ethical code in contract negotiation; (vi) the in-depth study of commercial securities in the light of the Civil code; (vii)the continuation of the activity within the Centre for Competition Law Studies. I intend to continue the coordination of individual and team projects, especially, by encouraging the study of competition law, currently insufficiently developed to its potential in the Romanian doctrine.

Endorsing the vision resulting from the inscriptions on the interior of the Romanian Atheneum dome, where "Legislation" is placed right between "Philosophy" and "Architecture", and observing that the subtle influence the two areas bring to the law, on the one hand, insight and creativity, on the other hand, rectitude and aesthetics, I submit that in an evolved society, the legal sciences have paramount importance, the added value stemming from the systematic, methodologically correct, innovative, and integrative study.

Considering the contribution I brought to the science and education in private law, I dare to judge I am an appropriate candidate for the habilitation in civil law and competition law.