

Civil procedure. Principles, role, rules, particularities

TABACU Andreea Elena

- ABSTRACT -

The thesis is structured into four parts revealing:

- I. The evolution of the academic, scientific, and professional career
- II. Scientific activity. Main area of research. Civil procedure
- III. The individual capacity to coordinate and participate in research teams, organize and manage didactic activities, explain and facilitate learning and research
- IV. Future projects in university, research, and didactic activity

I. The evolution of the academic, scientific, and professional career

Professionally, I am in and between two worlds, that of university life lived intensely, according to the power of the moment, composed of the most beautiful things: research, science, youth, trust, the desire to change the world, and the real one, the judiciary, in finding the current legal reality, litigants and courts overwhelmed by cases, enormous and inappropriate rules for the actual recipients, misunderstood speed and complex procedures, carried out according to the power of each to understand them and apply.

The development of academic activity and a teaching career in higher education in the legal field was a goal that I pursued from the first years of school. Immediately after completing law studies, I held a competition and got a position as a teacher at the University of Pitesti. Later, I graduated as an assistant, a lecturer, and now as an associate professor.

I constantly followed the advice of my teachers, who firmly conveyed to me that only good is done with a thorough knowledge of the law and a particular morality.

In 2000, I received first place in the country at the final exam in law for lawyers, for which I received the "Ioan Mihuță" award for young lawyers, awarded by the Union of Lawyers.

As the activity in the university environment involves only partly the didactic and research, being necessary also the development and administrative improvement of the educational structure and ensuring its visibility, I was substantially involved in all specific activities: organizing study programs (curricula education, states, timetables), entrance exams, completion of studies, the establishment of the accreditation file and those authorizing new specializations, participation in competitive commissions for teaching positions, preparation of rules of organization and operation, preparation of methodologies especially for adaptation to the transferable credit system. I was the initiator and contact person of ARACIS for the day programs Law faculty, Master – Public Administration in European integration, Master – Community and International Legal Institutions.

I have been actively involved in organizing international conferences with scientific topics of global interest, from the scientific committee for selecting papers, including prominent personalities in law from Austria, France, Germany, Poland, and Spain. In the conferences, I was a section moderator, presented papers, and took care of publishing the conference volume.

The research activity necessarily involves the participation in national or international conferences in which, in addition to the exchange of experience in the field of law between participants, there is also the concrete transmission of individual or team research results, which are analyzed ad-hoc and which reveals the capacity for clear presentation, argumentation, and spontaneity. The research topics in point II were also partly presented during international conferences, often in a foreign language. Compared to the level of the meetings, the respective papers analyzed both internal aspects and European or international law related to the topics addressed, which reveals the concern for observing the norm and inner realities through the prism of the supranational ones (both substantive and domestic law, which have been analyzed with European law).

I participated in a series of competitions in which I always won the place where I opted to be promoted to the didactic degree, respectively, in the following professional degree, and I gained experience in exams with synthesis or grid subjects, after which I understood how to report to my students.

I am a member of the editorial boards of The Romanian Journal of Jurisprudence, Romanian Foreclosure Magazine, and the Journal of Legal and Administrative Studies. I have reviewed articles or papers submitted for publication. I have been part of various committees for the promotion of teachers, the presentation of doctoral theses, and the promotion of judges.

II. Scientific activity. Main area of research. Civil procedure

In the vast field of civil procedure, I have carried out scientific research from the perspective of general rules by dealing with issues of interest to both phases of the civil process: trial and enforcement, taking into account the evolution of rules determined mainly by the adoption of the new Code of Procedure, as well as on specific procedural issues, in particular matters such as administrative litigation, tax litigation or insolvency proceedings, in which there have also been critical legislative changes, along with the new Code of Civil Procedure.

In this area, the research activity materialized in time by elaborating:

- Several courses: a) civil procedure for undergraduate education, specialization Law in several editions, which kept pace with the frequent legislative changes (2007-2009, 2011, 2013-2015, 2019); b) arbitration and enforcement for the master (2 editions); c) judicial cooperation in civil matters for the master's degree (2 editions); d) elements of law and business law for economic specializations (2 editions);

- Four monographs dealing with procedural institutions after the adoption in 2013 of the New Code of Civil Procedure (citation and communication of civil procedure documents, two editions, appeal for annulment and review), particular aspects of the bailiff's profession (disciplinary liability), lease agreement according to the New Civil Code (text comments and case law);

- Several specialized articles on several procedural principles and institutions (free access to justice, resolution of cases within a reasonable time, speed of proceedings, right to defense, public legal aid, availability of parties to civil proceedings, summons and communication of documents procedural, evidence, appeal, review, enforceable titles,

enforcement costs, tangible assets, some special procedures – settlement, low-value claims, recognition and enforcement of foreign court decisions);

- The part regarding the appeals from the Treaty of Civil Procedure – coordinator Prof Ph.D. I. Leş;

- Parts related to the civil procedure, from collections of grids for the legal professions (4 editions, between 2016-2019);

- Comments on final judgments that have influenced the jurisprudence (jurisdiction of the syndic judge, requests sent to the court by e-mail, preliminary procedure in litigation regarding civil servants, legality of appeal, the exercise of the appeal by a lawyer).

The research carried out mainly in connection with the entry into force of the new Code of Civil Procedure sought to clarify legal notions introduced or reformed by the legislator for their correct use and standardization of jurisprudence in the spirit of regulation and considering the requirements of supranational law, in particular, the rules and case law of the two courts in Strasbourg and Luxembourg.

During the publication of the preliminary theses of the draft Civil Procedure Code and subsequently of Law No. 202/2010, which aimed to adapt the previous Procedure Code to new realities in order to accelerate the resolution of civil cases, we note that the measures considered by the legislator as effective for ensuring the acceleration of the resolution of cases considered: the summons and communication of procedural documents, the role of the judge, the development of alternative procedures, in particular facilitating access to the mediation procedure, the distinction between public and private order rules, the solutions in appeals and the limitation of the number of cassations with reference.

Regarding the role of the judge in civil proceedings, compared to the express provision, which gives him the possibility to provide or restore the legal qualification of the acts and facts brought to trial, even if the parties have given them another name, I considered it worthwhile to mention this possibility of the court, which is required to qualify the request when it is not founded in law or which must analyze the legal qualification given by the party, concerning the alleged facts and change it, if it considers this to be justified. Regarding the possibility of the parties, under their availability, under certain conditions, to bind the court regarding the legal basis and the name of the claim, I considered that, given the legal requirement that the agreement does not infringe the rights or legitimate interests of others, one could imagine agreements by which the parties transact on the rights of minors or claims in which the parties dispute by collusion the ownership of an asset that belongs to another or tend to remove an asset from the pursuit of creditors, or request the protection of the law in the matter of special procedures (insolvency), to benefit from stopping the flow of penalties and other accessories, hiding under the chosen legal basis. We appreciate that in such cases, the judge will not consider the limits imposed by the express agreement of the parties but will proceed to the correct qualification of the request.

Upon the entry into force of the new Code of Civil Procedure, I supported the solution introduced by the legislator regarding the obligation of specialized defense in the appeal, which I still believe, pointing out that appealing to a specialist is always beneficial for the administration of justice. However, the costs necessary to fulfill this legal obligation were considered insufficient to represent a serious counterweight to the tangible advantages brought to the litigants by such a regulation. The expenses required to satisfy this legal obligation were, however, considered insufficient to represent a serious counterweight to the tangible advantages brought to litigants by such regulation.

Starting from the principle of adversarial that it ensures, I researched the citation and communication of procedural documents. I paid particular attention to the novelties brought into the procedure by the Code of 15.02.2013 and these procedural institutions' usefulness and practical frequency.

The principle of the right to a fair trial in an optimal and predictable term constituted an essential point in the research activity concerning both phases of the civil process and with concrete application in administrative litigation. I noted that the new vision of the Romanian legislator on the way the civil process is carried out would also influence the administrative procedure because Law no. 554/2004 does not include sufficient provisions. I have analyzed the rules of the new code relating to the possibility of the judge extending the subjective procedural framework, the subpoena request, the service of judicial documents in the procedure, including electronically, the possibility of filing an appeal against the decision of first instance, the execution of the judgments pronounced in the matter of the administrative litigations.

I have tried to identify solutions for applying certain institutions of civil procedural law that do not find a clear answer in the rules of the code and which, in practice, raise several difficulties for the ordinary judge to apply the rule. Based on the jurisprudence, the mandatory decisions of the Supreme Court, and the specialized literature, I analyzed the obligation to pay the stamp duty concerning the waiver of the trial, the jurisdiction in claims directed against legal entities under public law, the abuse in the procedural law, the prior procedure, the possible application of the equivalent cases from the Code of Civil Procedure in fiscal matters, the presumption as a means of evidence, the use of proof in appeals, the principle of legality of appeal, the order of exercising the right of appeal, the reasons for annulment of a decision, the review for adverse decision, aspects, specific procedures in the field of public procurement, administrative litigation, and insolvency.

Regarding the enforcement, under the previous Code of Civil Procedure, I have analyzed in various studies the evolution of the procedure for approving enforcement based on the decisions of the Constitutional Court, investiture with executory formula, enforcement appeal, and the novelties brought by the code from 2013. I researched various enforceable titles and their legal regime, which could impact the notion of "appeal" from Art 399 Para 3 of the Civil Procedure Code previously, which later became a "procedural remedy" in the current Art 713 Para 2 of the Civil Procedure Code, making the distinction between the debt title and the executory one in fiscal matters.

I dealt with the requirements for initiating enforcement, particularly the enforceable titles enshrined in the Civil Code, with express reference to the lease. Concerning the recognition of foreign judgments handed down in the Member States of the European Union, given the desire for such a judgment to be treated as if it had been given in the requested Member State, I considered it worthwhile to eliminate the exequatur procedure before the decision. However, I believed that this aspect could not affect the right of defense, so the debtor must be able to oppose either recognition or enforcement by invoking a ground for refusal, being necessary to have a procedure in which to present them.

Given the topics' particular interest, I approached the issues of enforcement costs, the quality of the bailiff before the enforcement court, the enforceable titles, the enforcement in the event of the debtor's death, the bailiff's disciplinary liability, theoretical and practical aspects regarding the relationship between enforcement and insolvency, and the specifics of enforcement in administrative litigation.

In the course of civil procedural law, developed for bachelor and master, I presented all the procedural institutions of the Code of Civil Procedure, considering the structure of curricula, in which arbitration and international civil process are provided for master and other books of the code are subject undergraduate study. From the perspective of students and those who are new to the legal field, the synthetic treatment of principles, procedural rules, and institutions in this field, together with the resolution of cases developed for the understanding of notions, were necessary support, ensuring knowledge of the procedure in the dynamics and laid the groundwork for further study by accessing the treaties and codes, which provide a much larger volume of information.

III. The individual capacity to coordinate and participate in research teams, organize and manage didactic activities, explain and facilitate learning and research

Throughout my teaching career, I have sought to ensure the most efficient way of guiding the student (bachelor or master student) by drawing up courses to facilitate the understanding of notions, their correct use in the legal environment, quick resolution, and, following the norm, of practical cases. Since 2012, I have included specific issues designed for each legal institution in the civil procedure cases. I have constantly presented procedural documents drawn up in cases completed to the students with the necessary anonymization (subpoenas, communications, conclusions, court decisions), and I have organized experimental trials with the public.

I also contributed to developing grid tests for legal professions, prepared on the specifics of professional examinations, accompanied by explanations, clarifications, and references to the legal provisions on which the solution is based.

I was constantly involved in the internship activity for the students to whom I ensured access to the courts, coordinating them and offering them the opportunity to observe the judge, the clerk, the content, and the case circuit. In this sense, I also participated in a European project meant to facilitate the practice during the years of study.

I was a member of the research team of a European project (COMPETA: EC Competition Law and its Enforcement in the National Jurisdictions: Policy Issues, Case Law and Compliance) and a trainer for judges in European competition law.

I have participated in teaching mobility within the Erasmus program, where I have carried out teaching activities with students from the host faculties, thus having the opportunity to observe the reality of other universities in Europe to enrich teaching methods and adapt my work at the European level (Sophia Antipolis University of Nice, France 2013, The Lower Silesian University of Entrepreneurship and Technology in Polkowice, Poland 2015). I also participated in teaching activities at the Ukraine – University of Legal Sciences in Kyiv – under the Academy of Sciences of Ukraine.

IV. Future projects in university, research, and didactic activity

Given the current reality, soon, I aim to complete the activity of structuring the teaching material in civil procedure adapted to online education, setting up course and seminar modules for each learning unit by presenting brief, schematic information to help the student. To understand the structure of the subject, based on which to develop the study by accessing the printed course or the bibliographic materials indicated at the beginning of the academic year.

Regarding the specialized practice, on the one hand, I intend to continue the cooperation with the courts based on the annual practice protocols, which will also provide access to court hearings which, according to the law, are public, and on the other hand, to provide students with concrete support for guidance in the online space, on specific justice sites, including at European level, by organizing seminars or workshops, online, at the departmental level, in to present the official websites of the internal and European courts and to allow students to carry out search operations under the guidance of the teacher.

I follow the updates on the courses according to national and supranational legislative changes. I want to ensure the student's contact with the real world by organizing meetings, thematic visits, and discussions with specialists of law and administration from institutions related to justice with persons who have accessed the public service provided by the judiciary.

In law school, I will continue to be involved in the organization of international conferences, participate in such scientific events, organize simulated processes, carry out the activity of guiding diploma papers dissertations, work within student scientific events, for consultations with students and master students, both for clarifying complex issues and for participating in student competitions, and for supporting those who have some difficulties in understanding and acquiring notions specific to civil procedure.

In the field of scientific research, I aim to develop a treaty of civil procedural law that thoroughly analyses the matter, presents the relevant theoretical and practical aspects, brings together a large part of the solutions proposed in the doctrine that has been embraced by jurisprudence, argues specific solutions, and provides possible answers to critical procedural issues.

I aim to develop psycho-pedagogical skills, teaching, transferring knowledge, and relating, respectively professional-scientific, to identify complex legal aspects, complicated, profound, to build theories and solutions which are specific to the doctoral school, to ensure the fulfillment of all the attributions that imply the guidance of some original doctoral theses, that respect the scientific and ethical standards, to determine the increase of the confidence level in the research activity.