

## HABILITATION THESIS

### Romanian Civil procedure – restoration, synchronization, evolution

Sebastian Spinei  
Associate Professor  
Lucian Blaga University, Sibiu, Romania  
Faculty of Law

### ABSTRACT

The habilitation thesis titled **Dreptul procesual civil român - restaurare, sincronizare, evoluție** (*Romanian Civil procedure – restoration, synchronization, evolution*) includes the main results of the academic, scientific and professional activity of the candidate, as well as the directions of evolution and development of his academic, scientific and professional career.

#### I. Main Achievements in the Academic, Scientific and Professional Activity

##### A. Academic Activity

I am currently an Associate Professor of Civil Procedure, Judicial Systems, Legal Profession and Civil enforcement procedures at the Lucian Blaga University of Sibiu, Faculty of Law.

My academic career started in the year 2000. Between 1997 and 2008 I have been also a practicing Lawyer as a member of Sibiu Bar Association.

I was a member of PhD Theses Committees at the Universities of Timișoara and Sibiu.

I have also been lecturing and holding presentations for the professional bodies of lawyers, bailiffs, public notaries in Romania, and also at undergraduate and PhD students Conferences and Courses in Hungary and Croatia.

## B. Research Activity

Along with my teaching activity, I have developed my research mainly in the field of Civil procedure, on multiple topics, but also in connected areas - Judicial Systems, Legal Profession and Civil enforcement procedures. I have been doing research on trans disciplinary topics, related to Civil procedure and other domains – the European Convention on Human Rights and the case law of the European Court of Human Rights, the class action, Administrative law, Civil law.

I followed doctoral and post-doctoral studies at the University of Sibiu, in the field of Civil procedure, with theses on the Appeals in Civil litigation (both theses were published, in 2008 and 2013, respectively).

I have been a visiting researcher at Maastricht University and Pázmány Péter Catholic University in Budapest.

I participated at numerous conferences and congresses in Romania and abroad.

I was accepted as a member of the *International Association of Procedural Law* in 2010, being proposed and supported by Professor Marcel Storme and Professor Janet Walker. I also collaborated with the Journal of the Association – the *International Journal of Procedural Law*.

I have published more than 40 articles and studies in the most important Law journals in Romania (*Dreptul, Revista Română de Drept Privat, Pandectele Române, Curierul Judiciar*). A significant number of papers were published abroad (*Intersentia, Peter Lang Europäischer Verlag der Wissenschaften, TMC Asser Press, Bruylant*).

Here are some of them: **Considerations on the Romanian legal profession system** (in *The Landscape of the Legal Professions in Europe and the USA: Continuity and Change*, Intersentia Cambridge-Antwerp-Portland, 2011), **Romanian Civil Procedure. The reform cycles** – (in *Civil Litigation in a Globalising World*, TMC Asser Press, The Hague, 2012), **Rules of Evidence in Romanian Civil Procedure and their impact on Truth and Efficiency** (in *Truth and Efficiency in Civil Litigation*, Intersentia, 2012), **Evidence in Civil Law – Romania**, Lex Localis Press, Maribor, 2015, **Tiers et procédure – Roumanie** (in *Les tiers. Journées panaméennes - Association Henri Capitant*, Éditions Bruylant, Bruxelles, 2016), **The Right Principles –What Outcome? Fundamental procedural rights and their implementation in Romanian Civil Procedure and other legal systems** (Intersentia, 2017), **Rules of**

**Arbitration in the Romanian New Code of Civil Procedure** (*Peter Lang Europäischer Verlag der Wissenschaften, 2017*).

I authored or coauthored seven books. The book *Căile de atac în dreptul procesual civil – drept român și drept comparat (The Appeals in Civil procedure – Romanian and Comparative Law)* was nominated for the best book on Private Law in 2013 at the Romanian Journal of Private Law Awards.

I am a member of the scientific or editorial boards of a number of prestigious Law Journals in Romania (*Revista Română de Drept Privat, Revista Română de Executare Silită, Revista de Științe Juridice, Acta Universitatis Lucian Blaga*).

## **II. Directions of Future Career Development**

I intend to continue my research activity on topics such as the class actions, the institution of the prosecutor, the action for partition, the conflicts of jurisdiction, the provisional measures, by publishing papers and holding presentations.

I am also planning to publish courses and text books to cover the disciplines that I teach, which will be able to be further elaborated and improved in the future.

I am considering organizing conferences, seminars and workshops involving professors and researchers, students and practitioners from Romania and abroad, and also Moot Court and Mock Trial programs.

One principle that I am planning to follow is organizing and using group work and team work at all levels – undergraduate, graduate, PhD.

## **III. Research results and contributions**

### **Introduction**

My entire activity was driven by an aspiration, a principle - trying to bring a contribution, to deliver something new, different, something which is beyond the level of the established/official doctrine.

In my research I followed and employed a number of methodologies that are discernible throughout my works.

I tried to identify the fundamentals of the legal institutions, their distinctive traits, which are indispensable to any analysis or law-making process.

I followed a series of objectives: to bridge the gap between Romanian procedural law and that of other states, a gap which was provoked by decades of isolation Romanian legal science and practice was subjected; to recover elements of our legal tradition, which faded away or were lost altogether; to (re)connect to the new tendencies and solutions in procedural law and to contribute to the development of our Civil procedure.

For this purpose, I employed various methodologies – identification of the reasons or principles behind a norm or a legal institution; the comparative method – the way a situation or institution is regulated in other systems; the contextualist approach, by identifying the legal, cultural, social and political ambience in which a particular rule or institution was introduced; the using of instruments pertaining to formal logic, terminology, linguistics, etymology, semantics; the method of relating the legal institution with its functions.

## **Research topics**

The main field of my research was that of the judicial process, particularly the area of appeal procedures. I explored a significant number of topics in this field.

One of these is the institution of *Cassation*, researching and analyzing it in several projects. I explained the nature and functions of the system of Cassation, its components (the second appeal on points of law and the ‘public’ appeals, filed by the Prosecutor-General – the appeal in the interest of the law [*pourvoi dans l'intérêt de la loi*] and the appeal in case of excess of power [*pourvoi pour excès de pouvoir*]) and the relations between them, the fundamental differences between the first appeal on questions of both fact and law (*apel*), and the second appeal on points of law only (*recurs*), and so forth.

In order to explain the evolution of the regulations in Romanian law, I analyzed the contexts of their succession, by presenting the sources of the 1865 Code of civil procedure and those of the modifications made in the Socialist period.

I was constantly preoccupied by the issue of the correct understanding and application of the procedural law concepts. This is why I tried to offer clarifications, to formulate criticism and to propose solutions and different views.

On this line, I identified and presented new categories regarding the classifications of appeals (appeals *for reformation* and *for annulment*); particular

forms and techniques of filing and entertaining the appeals (the 'autonomous' appeals for annulment [*recours-nullité autonomes*]; the distinction between *novum iudicium* and *revisio prioris instantiae*; the technique of 'evocation' in the court of appeal).

I analyzed and explained the so called principle of equipollence/equivalence, which applies in the area of the procedural time limits, identifying the real reason of the introduction of these solutions in the Romanian civil procedure.

I was also researching on the content of the categories of 'procedural indivisibility' and 'explication of introductory demands' in the first appeal.

I tried to present the correct perspective over an issue which was less well understood - the extent of the control of the Court of Cassation over the facts of the dispute.

I analyzed the question (which was controversial before the adoption of the new code of civil procedure) of the possibility of taking evidence in the phase of deciding on the merits after cassation. The solution I re-discovered and presented is currently prescribed by the new code.

I criticized, among other things, the conditions for the admission of final appeals which were introduced by the new code. I showed that in the more restrictive systems, where conditions for the admission of final appeals are established, it is generally the public importance of the case which serves as a criterion. English law applies criteria such as the raising of *an important point of principle or practice*, or of *legal points of great general public importance*; in Germany, permission to appeal is granted when *the legal matter is of fundamental significance* or wherever *the further development of the law* or the *interests in ensuring uniform adjudication* require a decision of the court of appeal; in Spain, the final appeal will be allowed also when there is an *interest for cassation (interés casacional)*, that is, when the challenged decision opposes the case law of the Supreme Tribunal, or it concerns issues upon which there are contradictory rulings of lower courts, or it applies legal rules in force for less than five years (without there being case law of the Supreme Tribunal on previous rules with identical or similar content). Similar criteria are practised in Denmark, Switzerland and Finland.

Another contribution is the clarification of the concept of compensatory remedies for the violation of the right to a trial within a reasonable time and the proposition of possible such remedies.

In the field of enforcement procedures I approached the issue of the distribution of proceeds in Romanian enforcement procedures, when a particular category of creditors – the bailiffs (legal officers entitled to enforce decisions of the courts) participate, seeking to recover their own fees. I also analyzed the questions related to the limits and conditions under which the bailiffs are to be considered preferential creditors and the legal mechanism which allows the bailiff to pursue the debtor for his fees.