UNIVERSITATEA LUCIAN BLAGA DIN SIBIU

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PhD THESIS

SUMMARY

SUBSTANTIVE AND PROCEDURAL CIVIL LAW. CONFLUENCES AND DELIMITATIONS

Doctoral student:
Alexandra – Georgiana ARION (AVRAM)

PhD Supervisor:
Conf. univ. dr. Sebastian SPINEI

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SUMMARY

At the basis of all systems, including the judicial system, there is an algorithm that organizes the structures that make it up in order to achieve predetermined goals. The judicial system is built in the form of a network whose operating algorithm is a unitary whole, with regulations that intersect and produce osmotic impulses in order to achieve the supreme desideratum, social order. In this context, this paper aims to attempt to decode the matrices that allow the functioning of some institutions through their connections with others.

The relationship between the institutions of substantive law and those of civil procedural law is a research topic which, from our point of view, is timeless and of both theoretical and practical interest.

As there are no boundaries between the fields of law and the links between them are constantly evolving, the challenge of the research topic is to identify the relationship between substantive law and civil procedural law, in the context that these fields of law are both autonomous and interdependent. This influence becomes ambivalent; substantive law and procedural law cannot be in opposition to each other; on the contrary, the logic of the rules in the two areas is complementary; substantive rights can only be enforced through a system of procedural law that effectively enables this to happen.

The complexity of the objective of the research, generated by the overlapping of several areas of private law (mainly civil law *stricto sensu*), made it necessary to restrict the research area to only some of the institutions that fall within this sphere.

We therefore set out to analyze the civil action, the extinctive prescription, the conditions and modalities of invoking the nullity of the civil legal act in the lawsuit, and the institution of representation (in substantive law and in procedure).

The analysis of the interaction between the fields of law could have no other starting point than the foundation on which the entire system of relations between substantive and procedural law is based - the civil action, highlighting the way in which the normative, doctrinal and judicial practice developments have led to the clarification of its connection with substantive law.

From a different perspective, from fundamental theory to actual professional practice, the aim pursued by bringing a civil action is objectified in the way the claims

are constructed, in the wording of the claim, which the operative part of the judgment will reflect. Moreover, the wording of the petitions may vary according to the field of law in which the legal relationship - the basis of the legal action - arises.

The substantive law institution of nullity is one of those which eloquently illustrates the interference between the different fields of private substantive law and civil procedure. It is for this reason that this paper sets out to demonstrate the dynamism of the use of nullity of a legal act in civil proceedings and the way in which its effects are produced in the procedural sphere. Another institution that reflects the influence of substantive law on civil procedural law is representation - which, depending on the subject - matter of the dispute and the legal subjects involved, takes on different legal guises and produces different legal effects.

The lack of current specialized works dealing with these institutions in an interdisciplinary manner has led to the interest in the present research topic, which hopes to bring about a change in the understanding of the importance of the effects of the inter-relationship of substantive law institutions - up to the practical level of civil procedural law.

Research aim, objectives and working hypotheses

The aim of the research topic is to identify the way in which substantive law institutions influence the plan of civil procedural law and to demonstrate that the functioning mechanism of the legal institutions under investigation cannot be analyzed strictly in relation to the field of law of which they are part, but also in relation to related branches of law. The need for the rules of substantive and procedural law to be considered together in the context of a dispute arises from the fact that there is a relationship of interdependence between these areas.

The general objective of this scientific endeavor is to identify the ways in which these interferences occur, in order to identify theoretical, legislative or jurisprudential solutions - to some controversial issues, with the ultimate and essential aim of contributing to the development of our law.

In order to achieve this goal, the analysis will be carried out starting from the general regulatory framework to the specific framework of the concrete ways in which the institutions of substantive law are manifested in the civil process.

Therefore, a first step in achieving this objective is to identify and determine the area of congruence and the outer limits of the sphere of influence between the rules of

substantive law and those of procedural law in the field of civil actions, nullity and representation. The aim will also be achieved by identifying the specific features of the substantive law institutions that contribute significantly, either directly or indirectly, to the generation of hypotheses of conflict with the rules of procedural law. Another aspect that we will deal with is the practical establishment of the procedural effects of substantive law institutions, by identifying how disputes are settled and the solutions handed down in specific situations in judicial practice in the areas of application of the institutions analyzed. We will also highlight the situations in which we consider it appropriate to amend the legal provisions in order to optimize the jurisdictional function, and to reduce the courts' workload.

The institutions will be analyzed both from a static point of view, through the legal provisions that regulate them, and from a dynamic point of view, through the way in which substantive law institutions are manifested in private law litigation.

The working hypotheses of this paper are also based on an analysis of the specialized studies in which the institutions dealt with here have been researched, both at national and international level. The specialized studies will be approached from the perspective of both procedural law and substantive law, in particular civil law, as well as the related areas with which these institutions interfere in order to highlight a diachronic or, at times, comparative perspective.

In addition to normative acts and specialized works, another working tool is represented by the case law of national and international courts on the subject, the analysis of which reflects the extent of the impact of the dynamism of substantive law institutions on the civil procedural plan.

Since the legal institutions that have been the subject of the present research are examined through a permanent combination of substantive and procedural civil law provisions, the results of the research that are capitalized in the conclusions, being the place where the proposals of *lege ferenda* have been placed.

Elements of research methodology

The specificity of the research thesis requires an interdisciplinary analysis that implies the translation of substantive law institutions into a procedural level, which implies the combination of general methods of legal research with specific ones, grafted on logical procedures of interpretation and analysis within the legal reasoning.

One of the research methods used in this paper is the historical method. The diachronic study of the institutions dealt with in this research makes it possible to understand the foundations that led to the regulation of procedural law institutions distinct from those of substantive law, as well as their evolution over time. The diachronic study also reveals the need to understand that the interpretation of the relationship between the rules of substantive law and those of procedural law entails a dissociative process of application of legal provisions, even if they overlap.

Another method used is the comparative method. The use of this method has made it possible to grasp in practical terms the fact that the same institution, depending on the angle from which it is analyzed, presents a distinct dynamic in civil actions. This method has also made it possible to identify the way in which institutions are regulated in other, predominantly European, countries, in particular the French legal system. The analysis of French law in particular is due to the fact that it was the source of inspiration for the Romanian legislator when adopting normative acts in these matters. By contrasting the two, the comparative method has made it easier to highlight the advantages of the way in which substantive law institutions operate within the framework of procedural law in other countries and to outline some proposals for lege ferenda designed to help optimize the time taken to settle disputes.

The critical method has made a significant contribution to approaching the relationship between substantive and procedural rules from a personal perspective.

The logical method, unavoidable in the study of the science of law, has required a rational analysis of the relationship between substantive and procedural law institutions. It was thus necessary to appeal to the foundations of logic, on the one hand to define the concepts at the intersection between the branches of law and, on the other, to formulate the interpretative rationales for the specific solutions identified in doctrine and case-law. The logical method was also the one through which the conclusions were constructed, systematizing the research results.

The research means and techniques used in this paper include legal analysis, which has allowed legal institutions and the relationship between them to be approached from a national, and where necessary an international, perspective. The impact of legal analysis is found in the way substantive legal institutions are applied in concrete practical situations. The nature of the research topic required a multidisciplinary approach. This analysis is a holistic one, integrating both procedural and substantive law rules, mainly civil procedural law and civil law, but also

constitutional law, labour law, administrative law, tax law, etc. Quantitative analysis was also used, which included the systematization of relevant normative acts and case law.

The research strategy aims to change the view of the relationship between substantive and procedural civil law rules by highlighting their ambivalent influence. Treatises, courses, monographs, national and international legislation, as well as relevant case law of both national and international courts have been used to achieve this goal.

PhD thesis structure

From a structural point of view, the thesis is organized in three parts, the first being dedicated to civil action, the second to nullity and the third to representation, divided into chapters and sub-chapters, according to the needs of systematization of the exposed matter.

The first part prepares the ground on which the influence of substantive law on civil procedural law manifests itself, namely in the „*Civil Action*". Although numerous pages have been devoted to them in specialized works, civil actions and their relationship with substantive law have remained an object of controversy to this day. In order to understand the context that gave rise to this institution, in the first chapter entitled *„Instead of an introduction, a diachronic view"*, we have briefly analyzed the development of the history of civil actions during the period of primitive communities where private justice prevailed, followed by the Roman era of actions, since they were the main starting point for its relationship with substantive law. The second chapter, entitled *„The concept of civil action"*, which includes the sub-chapter *„The evolution of the concept of civil action*", deals with civil action from the perspective of its terminology and the definitions that this institution has received over time, in chronological order, both in international and Romanian doctrine. The third chapter deals with „*The legal nature of the civil action*". Referring to the conclusions drawn from the previous chapter, the identification of the legal nature of the civil action required the analysis in three distinct levels, namely in the sub-chapters „*Civil action and subjective right",* „*Civil action and the right to action*" and „*Civil action and extinctive prescription*".

In order to highlight the influence of substantive law on procedural law in the civil action, the subchapter „*Civil action and subjective law*" emphasized the legal nature of the civil action in relation to subjective rights. The establishment of the relationship between these legal concepts was realized by means of the outlined doctrinal theories

on the action, their criticisms and limits. The development of the relationship between civil action and substantive law started from a radical separation of civil procedure from substantive law, in which the purpose of civil procedure was purely procedural and substantive law subordinate to it. A second view emphasizes the obvious predominance of substantive law, the task of procedural law being limited exclusively to the realization of substantive law. Subsequently, the relationship between the two was oriented towards a dual correlation between civil procedure and substantive law, according to which the objective of the procedure is the realization of individual rights, with the aim of maintaining legal order and stability, while it benefits from its own legal regime.

Since the exercise of legal action involves the interference of procedural law and substantive law, the sub-chapter „*Civil action and the right of action*" sought to identify the source of the link between the two feilds of law, starting from several hypotheses. In this context, with reference to the relationship with the subjective right, the working hypotheses attempted to answer the following questions: is the possibility for the holder of a violated subjective right to have recourse to the coercive power of the State, namely the right of action, part of the content of the subjective right, is it identified with it, or is the action itself a subjective right, but distinct from the subjective right it protects? Is the civil action an intrinsic, defining component of every subjective right, or does it arise at the moment of infringement of the subjective right? Or is it of a different legal nature? All these questions were analyzed in the second sub-chapter.

The doctrinal preoccupation with qualifying the legal nature of the right of action has given rise to the dichotomy of substantive right of action - procedural right of action, which we do not embrace. This legal construction was necessary in order to explain how extinctive prescription works and how it produces its effects. Accordingly, the section „*Civil action and extinctive prescription*" emphasizes the source of this conception and, at the same time, the relationship of extinctive prescription to both substantive and procedural law. In this section, we have tried to change the paradigm of whether extinctive prescription belongs to substantive law.

The intermediate conclusions emphasize the need to use these concepts in strict accordance with the content and nature of the realities they represent, considering that it is necessary to establish their own specific legal nature. This nature derives from their very *raison d'être* as fundamental institutions of the two fields of law, civil and civil procedural. The correct establishment of the relationship between the action and the other legal institutions and, implicitly, of their legal nature, we consider

that it precludes the possibility of their being merged. This independence is necessary even if they are closely linked, have evolved and, in a given historical period, have led to one being asserted through the other.

The second part of the paper, entitled „*Relations between substantive nullity and civil procedural law. Theoretical and practical aspects*", translates substantive nullity into procedural nullity. Structured in four chapters and several sub-chapters, the institution of nullity is treated from both a theoretical and a practical perspective. As in the first part, the foray into the analysis of how substantive nullity influences civil procedural law begins with a first chapter entitled „*The concept of sanction. A brief history of nullity*", devoted to some general historical aspects and highlighting the legal nature of this institution. The next chapter, *„Nullity in substantive law and nullity in procedural law"*, structured in several sub-chapters, namely „*Characteristics*„ and „*Functions of nullity*", deals with the general theoretical aspects of nullity necessary for the practical analysis carried out in the following part of the work.

Beginning with the third chapter – „*The legal regime of nullity*" - the way in which nullity manifests itself in procedural terms and how its effects are produced is analyzed. This chapter is divided into two sub-chapters, *„Invoking nullity by way of action"* and „*Invoking nullity by way of exception*", which are in turn organized into several subsections, dictated by the needs of the subject matter.

The sub-chapter „*Invoking nullity by way of action*" analyzes the influence of nullity on civil procedural law in the hypothesis of its enforcement by means of an action. Starting from the definition of nullity action, the identification of its legal nature, the clarification of its object, the conditions under which absolute nullity may be enforced by means of a civil action and the purpose pursued, this sub-chapter sets out, through an analysis of the relevant national and international case-law, the concrete way in which this sanction is manifested in the procedural plan. Starting from the way in which nullity is manifested in civil law - the common trunk - this translation is carried out from the perspective of several branches of law, namely labor law, administrative law, tax law and insolvency law. Of interest for the chosen research topic, this sub-chapter analyzes the imprescriptibility of nullity actions and the way in which the endless time in which a nullity action can be brought affects the stability of the civil circuit. After analyzing the way in which the time limit for bringing an action for a declaration of invalidity is regulated in European law, as a natural consequence of the presentation of the drawbacks of imprescriptibility, a personal note is made on the way

in which the time limit for bringing an action for a declaration of invalidity should be regulated.

The sub-chapter „*Invoking nullity by way of exception*" deals with the way in which absolute nullity can be invoked by way of exception and the effects it has on civil procedural law. We considered that the legal nature of the exception of nullity could not be successfully established without a diachronic view of its genesis. Then, following the same line of the first sub-chapter, the term within which nullity can be invoked by way of exception in the local and foreign legislation was analyzed, and a personal note was added on the way in which the term of invoking the sanction by way of exception should be regulated.

Also, we considered that a comprehensive examination of the regime for invoking the plea of nullity, which is a genuine substantive defense, requires highlighting the effects it has on civil litigation, depending on the procedural stages in which it is invoked, respectively the procedural acts through which it can be used. Thus, the following subsections analyze the invocation of the plea of nullity at different moments of the procedural stage of the merits - for the first time by way of a statement of defence, during the investigation of the case, at the stage of the debate on the merits of the case or for the first time by way of written submissions. At the same time, by analyzing the legal provisions and case law, exceptions to the possibility of invoking the plea of nullity at the first stage of the civil proceedings were also identified.

Naturally, the research continues by examining the possibility of invoking absolute nullity by way of exception for the first time in the appeal and appeal remedies. Along the same lines as at the stage of the proceedings on the merits, the possibility and the effects of the plea of nullity raised for the first time in the appeal by way of a statement of appeal, at the stage of the judicial investigation of the appeal, at the stage of the hearing of the appeal or, for the first time, by way of written submissions are examined. At each of the three stages of the procedure, the investigation shall set out the manner in which the court will rule on the objection and the acts by which it will do so.

Given the fact that the substantive rules dictate that the court is obliged to invoke absolute nullity of its own motion, the fourth chapter, entitled „*The court's invocation of nullity*", analyzes the concrete hypotheses that give rise to this obligation, the manner and limits of its invocation, as well as its effects in practice.

The intermediate conclusions highlight, on the basis of the analysis in the previous chapters, the dynamics of absolute nullity in procedural law and the effects of the substantive rules governing this institution on civil procedural law

The third part of the thesis is entitled „*Representation in substantive and civil procedural law*". Keeping the same method adopted in the first two parts, the comparison of the two contexts in which the institution operates is carried out by an initial incursion into substantive law, and then the institution is analyzed in procedural law, both from a theoretical and a case-law point of view.

The first chapter, „*Representation - an institution regulated by the New Civil Code",* as the title suggests, examines representation from the perspective of substantive law in seven sub-chapters. This chapter deals with aspects of substantive law which are transposed to the procedural level in the second chapter of this part. The history of this institution is also explored, followed by the general framework of this institution, starting with its concept, classification, the conditions of representation (for both natural and legal persons) and the effects it has. The need to deal with these theoretical aspects derives from the fact that they serve as an auxiliary tool for the second chapter and are also applicable to procedural law.

The second chapter, entitled „*Representation - an institution regulated by the New Code of Civil Procedure",* analyzes the institution of representation in the procedural field. Thus, for each of the types of representation regulated by the Romanian legislator, the effect it produces from a jurisprudential perspective is analyzed, showing its procedural implications.

Finally, the general conclusions will bring together the original elements of the thesis as they have been analytically supported during our scientific endeavor.

Personal contributions

The research theme, built in an interdisciplinary vision that marks the permanent interferences between substantive and procedural civil law, presents elements of novelty and originality. This imposes an innovative character in the landscape of the specialized literature, because, until now, the institutions that have been the subject of this study have been analyzed exclusively from a material or procedural perspective, without realizing the influence of one on the other. The institutions examined in this paper have not been the subject of a homogeneous study in our legal literature, although the knowledge of their interdependence with procedural law is a felt necessity.

The approach of the subject has given the opportunity to review and analyze through a theoretical-practical combination of the most frequent interferences of the legal concepts treated, in close connection with the practical, procedural means of defense or assertion of subjective rights, which are part of the content of the legal relationships to which the respective institutions refer. By attempting to synthesize a certain range of technical-legal aspects in a concentrated number of pages and in an accessible form of substantive and procedural law institutions, while carefully following the clarity of the exposition, the work captures the changes that the dynamics of substantive law institutions entail in the procedural field. It reflects a picture that captures the complexity of the influence of substantive law on civil procedural law.

Even if some of the ideas presented in the paper have already been presented in various legal writings by well-established authors, and others have only been outlined (a fact duly pointed out during the study), we have tried to deepen them, advancing, case by case, proposals of *lege ferenda*. We believe that the results of this research will contribute to a better understanding of the relationship between the rules of substantive and procedural law and of the legal provisions that lie on the borderline between these fileds of law, while also pointing to the need for the legislator to intervene in the area of congruence and the outer limits of the sphere of influence between the rules of substantive and procedural law in civil actions.