

University of Bucharest

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ABSTRACT

Habilitation thesis „*The King’s Two Bodies: public funds – nervus rerum for the activities involving the exercise of public power and the economic activities of the state*”

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The habilitation thesis presents the main professional achievements I have obtained both in terms of scientific research and teaching. It also presents the research directions I will follow in my future work as well as my teaching objectives. The conclusions highlight the consistency between the research topics I have already covered and the proposed research directions, as well as the coordinates and objectives of my teaching activity.

The topic for the habilitation thesis is *The King’s Two Bodies: public funds – nervus rerum for the activities involving the exercise of public power and the economic activities of the state* and it synthesises the research topics addressed in studies and volumes published to date or currently undergoing. Thus, starting from the medieval distinction between the political, institutional body, of the king, which allowed for the continuity of the political power, and the human body, that of the individual, with a limited existence in time, the applicable legal norms establish different legal regimes for the activities of the state involving the exercise of public power, which would correspond to the permanent "political body" of the state, whose continuity is an element of sovereignty, and for the economic activities of the state, which can be likened to a "mortal body" since they are subject to competition rules and therefore may cease under the conditions established by those rules. For both categories of activities, the legal regime of public funds is an essential component, which differs depending on the use of funds for one or the other of these activities.

The topics and research directions presented in the thesis are part of an effort that I strive to maintain consistency in and whose result I aim to be the outline of a specific field of study that brings together and harmonizes the elements of financial and economic activity in the public sector by clarifying their legal regime and establishing their constitutional grounds.

The first chapter of the thesis briefly presents the manner in which the context of my specialisation in Public Financial Law and related interests in private law - particularly civil and commercial law - has developed and evolved. This evolution has led scientific research towards the boundary between public and private law, and to the use of concepts, institutions, and reasoning specific to both areas for structuring analyses in the connected fields of Public Financial Law, Public Contract Law, and Public Economic Law. The reasons for selecting the general topic of the thesis are also presented.

The second chapter of the thesis provides a comprehensive account of the professional achievements attained in both scientific research and teaching activities following the conferral of the doctoral degree in Law. The first section, dedicated to scientific research, presents the outcomes within each relevant legal discipline, with an integrative perspective and the interrelations among these research themes elucidated in the section's conclusions. The research milestones are thus delineated across the fields of Public Financial Law, Public Contract Law, Public Economic Law, and Tax Law, as well as in related topics that synthesise elements from these disciplines, such as those concerning the garnishment of accounts held by public law legal entities.

Within the domains of Public Financial Law and Public Economic Law, the principal research themes have focused on the reformulation of the disciplinary framework, achieved through the reconfiguration of the essential elements analysed in the Public Financial Law course. This includes the establishment of criteria for identifying public funds, the legal regime and effects of budgetary authorisations, the statutory limitations imposed on the conclusion of contracts and the execution of payments from public funds, and the determination of criteria for identifying public investments. Further, the research encompassed the analysis of the legal coordinates of budgetary balance - particularly the relationship between budgetary balance and constitutional principles, the legal benchmarks for limiting budget deficits and public debt, comparative analysis of legal mechanisms for deficit and debt limitation, the relationship between government securities trading and the application of deficit and debt limitation rules, and the vertical separation of financial authority. The research also addressed the elements of the economic constitution, the delineation of local financial autonomy, and the legal regime of public enterprises, including the analysis of categories of public enterprises as elements of the relationship between the state and the economy, the criteria for determining the autonomy of public enterprises, and the acquisition of special rights by the state as a shareholder in project companies. Finally, the research outlined the legal regime of public guarantees, with particular emphasis on local public guarantees, after the publication in 2011 of the updated PhD thesis as a monograph on *Public Guarantees*.

With regard to Public Contract Law, research topics are presented in relation to the main categories of contracts (works and services concessions, public-private partnerships, public procurement). Among the research topics addressed, the thesis mentions the establishment of criteria for distinguishing public contracts from other contracts, respectively for differentiating between the various categories of public contracts, the economic analysis of risks in public contracts, the proposal of an interpretation of the regulation of operating risk in Romanian law to ensure its compliance with European law, the adaptation of public contracts, the regime of assets in privately financed public contracts, the contractual aspects of services of general economic interest, including those related to the specific elements of public-public cooperation in the provision of these services, the application of competition rules, in particular those on state aid, or the legal benchmarks for recognizing a legal obligation to ensure efficiency in the provision of public services. As concerns the sub-domain of Public-Private Partnership, the thesis describes the commentary on the special law co-authored with Professor Monica Rațiu as well as the articles published and the presentations to various conferences on multiple topics concerning these contracts. The thesis also presents the conclusions of the recently published

studies on sub-contracting and the confirmatory document, co-authored with Professor Monica Rațiu.

Within the same section dealing with the presentation of the results of the research, the elements of originality pertaining to the legal aspects of the financing of public investments are also presented – first, the post-doctoral research project conducted under the supervision of Professor Emil Bălan on the configuration of a comprehensive legal regime for the financing of public investments, as well as the publications (a monograph and articles in legal journals) achieved as part of this project, as well as those relating to the principles of tax law (the principle of tax fairness, the application of the principle of solidarity in tax matters, the use of tax policies for environmental protection objectives, the tax aspects of the economic activity of the state and administrative-territorial units). Along the lines of the research on this latter topic, which I have proposed for the Tax Law panel of the 2026 Congress of the International Association of Comparative Law, I was named together with Professor Marilena Crăciun General Rapporteur for this panel with the topic *The State as taxpayer: economic activity of the State and related tax obligations*. Last but not least, detailed analyses are provided on various aspects of the garnishment of accounts of legal entities governed by public law, topics of practical relevance for which arguments are put forward with a view to an appropriate interpretation of the provisions of Government Ordinance No. 22/2002.

The presentation of publications and scientific conferences is complemented by details of the research projects in which I have been involved, as well as expert opinions formulated for the High Court of Cassation and Justice and the National Union of Bar Associations, and scientific conferences organized. The section concludes with a highlight of how the research topics and directions pursued are integrated into related fields, which bring together elements of the financial and economic activity of the public sector, by clarifying their legal regime and establishing constitutional grounds.

The section dedicated to teaching activities carried out in the same disciplines within the Faculty of Law of the University of Bucharest (public financial law, tax law, banking law, concessions, public-private partnerships, public economic law) and as a visiting professor at universities in Romania and abroad, provides details that support my ability to organize and manage teaching activities, explain and facilitate learning and research, and coordinate research teams. Thus, I have highlighted the efforts to update the topics taught and the methods and materials used, the establishment of the master's program in Public Procurement, Concessions, Public-Private Partnerships, and of the discipline of Public Economic Law, which are not offered by other law faculties in Romania. Also detailed are the ongoing activities of coordinating undergraduate and master's students in the preparation of bachelor's theses and dissertations, participation in annual scientific conferences, the organization of moot court competitions, participation in doctoral meetings to guide doctoral students, as well as participation in various committees of educational interest, for positions in legal education or other public institutions.

Chapter III of the thesis details, in its first section, the proposed objectives of scientific research for each of the relevant disciplines (Public Financial Law, Public Contract Law, Public Economic Law), indicating the works currently in progress for each of them, the research

projects envisaged, and the scientific conferences in which I will participate or which I intend to organise in the near future. All the publications and conferences that are mentioned represent a natural continuation of the research topics already analysed. The second section of this chapter presents the objectives proposed for the improvement and development of teaching activities and the supervision of students and young researchers. It is emphasised that the multitude of topics available for debate and analysis in the fields of Public Financial Law, Public Economic Law, and Public Contract Law serves to demonstrate the contemporary relevance of these disciplines, while also enabling the regular organisation of conferences and of a debate circle, whose principal beneficiaries will be students, master's candidates, as well as doctoral candidates.

The conclusions of the thesis emphasize that the research objectives I am planning to undertake are specific to the related and connected disciplines of Public Financial Law, Public Economic Law, and Public Contract Law, whose common role is to rationally explain, with the help of legal concepts, institutions, and reasoning, the efficient functioning of the two major spheres of activity of the state – activities involving the exercise of public power and, respectively, economic activities carried out directly or indirectly. Each of these legal disciplines uses its own principles and rules, whilst the use of public funds in support to both categories of activities of the state will in its turn be subject to such particularities, despite the existence of common elements in their legal regime.

As summarized in the title of the thesis, the research topics analysed in the papers I have published, most of which have also been presented at national and international scientific conferences, have sought to outline the legal landmarks of the distinction between the exercise of public power and the economic activities of the public sector, particularly with regard to the effects this has on the legal regime of public funds. The use by the state (in the broadest sense of the term) of its money and assets to carry out economic activities and to interact, in general, with the economy, through public policies but especially through *dominium*-type legal norms, the relationship between these norms and the *imperium*-type norms, involving the exercise of public power, and drawing the line between them are the landmarks not only of my preferred field of research throughout my career so far, but also, most likely, of my future interests.

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