

**University of Bucharest**  
**Faculty of Law**

PhD Thesis

**The *nemo auditur propriam turpitudinem allegans* principle - analysis of its adaptability  
and dynamics in private law relationships**

Summary

**PhD supervisor:** Prof. Univ. Dr. Valeriu Stoica

**PhD candidate:** Alexandra-Luiza Mareş (Ionescu)

- 2023 -

Within the framework of the PhD thesis entitled *Principle nemo auditur propriam turpitudinem allegans - analysis of its adaptability and dynamics in private law relations*, we propose a novel and complex analysis of the *nemo auditur* principle, thus marking a novel element offered by the present work, namely the monographic approach of this rule of law.

The privilege of novelty was an important factor in the choice of the topic of the PhD thesis, and the innovative elements of the research we conducted highlight areas of controversy, longevity, flexibility, all of which reveal a chameleonic, vigorous, complex concept whose legal utility gravitates in those dimensions of the individual's reality, but also of society that remain substantial.

Fundamental values, equity and morality, having acquired a legal physiognomy, have also become catalysts for the generation and development of other legal institutions that transpose the corresponding desiderata of these essential pillars in a specific way.

Such legal institutions can manifest themselves in different forms, be it as a legal principle, an obligation or a remedy. What is interesting about legal mechanisms of this kind relates to their ubiquity or their ability to carry the prescribed demands of equity and morality into the realm of various matters and institutions specific to civil law. Legal mechanisms or institutions endowed with such omnipresence or pluripotency are also those outlined by the doctrine of good faith.

We have therefore anticipated the area of interest within which we will conduct our research and in which we will observe the principle *nemo auditur propriam turpitudinem allegans* in a broad dynamic, in its direct or indirect forms of manifestation, compared to similar mechanisms or from blurred perspectives of its application, this whole framework for study and analysis being provided by two main triggers.

The first of these is, as mentioned above, the chameleonic character and robust adaptability that are characteristic of the *nemo auditur* adage.

The second trigger was revealed by the legal DNA of the principle under study, namely its structure which is based on the demands of equity and morality, fundamental values of the field of civil law, and law in general. This specific structure, as we shall demonstrate in the present work, places the rule of turpitude in the great caste of good faith, along with other principles, obligations and conduct that spring from the essential rigour of good faith.

Thus, the interest in the *nemo auditur* rule is due to the unique legal physiognomy of this concept which, being based on the essential values of fairness and morality, it reveals a high level of flexibility and, despite its controversial nuance, has demonstrated a strong resilience to the pace of evolution of civil law.

In this paper, we aim to demonstrate how the particular elements of *nemo auditur* have provided it with the necessary bonds for a long legal life; in this respect, we have analysed *turpitude* in its broadest sense, by observing a multitude of incorrect, culpable, bad-faith, incoherent, etc. conducts and behaviour.

The research process resulted in a structure consisting of four parts or chapters, which in turn were organised into two or three sections, depending on the topic corresponding to each chapter discussed. Most of the sections have pentagonal anatomies, without this organisation being the rule.

Our paper opens with an overview of the principle *nemo auditur propriam turpitudinem allegans* by observing the essential and configurative elements in relation to this focal point of research.

Therefore, **Chapter I**, the *General Considerations* plan, presents in Section 1, *the Origin and history of the principle nemo auditur propriam turpitudinem allegans* aspects that arose in Roman law; we have thus highlighted the fact that the variety of actions *condictio* did not produce, at that time, the principle *nemo auditur* in the form and configuration encountered today; although in the period of Roman law debates on illicit or immoral causes, on one's own turpitude and on elements of unjust enrichment took shape, the *nemo auditur* rule emerged later, in the era of canon law.

Influenced by Roman law and canon law, the French legal system of the time took the path imposed by the imperative of equity, good faith and respect for good morals, including the form of the prohibition of invoking one's own disloyal, dishonest or *turpis* conduct in an attempt to be heard by justice. However, although advocated and promoted by leading jurists of French law, the adage *nemo auditur* was not expressly enshrined in the Napoleonic codification, a fact which was caused by the difficulties in configuring the content and scope of the principle.

Thus, the task of outlining the defining aspects of the *nemo auditur* principle was placed by the French legislator on judicial practice and literature, a strategy which, in one form or another, has also been addressed in other legal systems, including national law.

Section 2 of the first chapter seeks to observe the relationship and dynamics of the principle *nemo auditur propriam turpitudinem allegans* with the doctrine of good faith. As anticipated, the connection of *nemo auditur* with good faith is an inextricable and complex one. The foundation of fairness and morality is to be found both in the rule of turpitude and, above all, in the doctrine of good faith, regardless of the legal nature of this rigour. Moreover, the transplantation of morality into the legal sciences has also occurred through the rigours of good faith, especially since morality has been the source of many concepts and requirements that today we see as obligations deriving from good faith, as is the case, for example, with the obligation of honesty<sup>1</sup>.

In the theoretical structure of good faith, we find the elements of loyalty, caution, discipline and moderation<sup>2</sup>, and this is due to the flexibility that this concept has. It is interesting to note that later, with the development of civil law, the simultaneous evolution of good faith has translated its elements into separate, self-contained obligations. In a similar way, the correlation between good faith and *nemo auditur* was solidified, a correlation that was initiated and could be identified from the level of the definition that Cicero<sup>3</sup> offered to good faith, by placing it between the *veritas* and *constantia* clauses.

Returning to the contemporary period and the way of observing good faith from the perspective of its regulation, we note that this concept has an upward trajectory.

In the numerous references to good faith found in the current Civil Code<sup>4</sup>, there are also particular references to its antagonist, bad faith. The two concepts have been descriptively

---

<sup>1</sup> S. Whittaker, R. Zimmermann, Good Faith in European contract law: surveying the legal landscape, in R. Zimmermann, S. Whittaker (ed.), Good Faith in European Contract Law, ed. Cambridge University Press, New York, 2008, p. 56, p. 89.

<sup>2</sup> D. Gherasim, Buna-credință în raporturile juridice civile, Ed. Academiei Republicii Socialiste România, București, 1981, p. 9.

<sup>3</sup> Cicero, De officiis.

<sup>4</sup> V. Stoica, Considerații comparative privind noțiunile de bună-credință, diligență, eroare, dol, fraudă, rea-credință, vinovăție (intenție și culpă), în Revista Română de Drept Privat („RRDP”) nr. 4/2020, Ed. Universul Juridic, București, 2020, p. 16.

referred to in the literature as "safety valves"<sup>5</sup> for the objective filtering of the conduct of legal subjects.

With regard to bad faith, similar to good faith, no unanimous definitions have been set up, but there are many theories and directions developed on these two concepts<sup>6</sup>. An important point to note in observing the two standards of behaviour is that they are found in different relationships, depending on the dimension from which they are viewed. Thus, on a subjective level, the two notions are antonyms, meaning that good-faith conduct will exclude bad-faith and vice versa<sup>7</sup>. This subjective dimension, observable in relation to the idea of appearance, is highlighted in the configuration of error, where the whole geometry of the conditions to be met for the invocation of this defect of consent is an additional criterion for observing the belonging of the principle *nemo auditur propriam turpitudinem allegans* to the doctrine of good faith; Thus, correct or diligent conduct, and therefore conduct in good faith, will preclude a *turpis* attitude, just as an attempt to invoke one's own culpable or lack of diligence conduct with the aim of obtaining benefits cannot be placed within the sphere of good faith.

In reverse synchronicity, *i.e.* in their objective dimension, good faith and bad faith are not exact antonyms, here the general platform of good faith is to be observed, and it is strongly influenced by the requirement of morality; more precisely, we are considering good faith as an expression of fidelity, loyalty, consistency, prohibition to harm another, thus a general, normative concept. Bad faith at its objective level is always verified in a particular way, depending on the situation that has revealed this attitude, by violation of the general obligation to conduct oneself in good faith<sup>8</sup>. In this dimension too, unfaithful, disloyal and, as we will discuss in more detail, inconsistent or self-contradictory conduct will represent a breach of the general obligation of good faith, which may materialize in a *turpis* attitude.

Further on, we depart from the generality of the study of the turpitude adage to observe, in **Chapter II**, how this rule manifests itself in the contractual flow.

---

<sup>5</sup> See M. Floare, *Buna și reaua-credință în negocierea și executarea contractelor de drept comun în noul cod civil și dreptul comparat*, Ed. Universul Juridic, București, 2015, p. 70.

<sup>6</sup> For an overview of the concept of good faith at European level, see S. Whittaker, R. Zimmermann, *op.cit.*

<sup>7</sup> V. Stoica, *Idem* 7, p. 30.

<sup>8</sup> *Idem*, pp. 35 - 37.

In this chapter, we analyse certain civil law institutions with the help of which the path of *nemo auditur* observation becomes more targeted. At the same time, we have found it useful to take a look, albeit briefly, at those institutions which, through their effects, their scope of application or the novelty they propose, mark this flow of contractual relations in an essential manner.

The first such institution is the nullity of the civil legal act. The observations to which we have turned in our analysis do not represent a complete or detailed picture of this civil law sanction. As such, the importance of addressing nullity in our study branches out in different angles. First of all, with reference to its feature of being a civil law sanction, we have pointed out an initial correlation between nullity and the adage *nemo auditur propriam turpitudinem allegans*, *i.e.* that nullity may operate, in certain cases, in order to effectively stop a turpitudinous conduct.

So there can be no question of competition in application between absolute nullity and the *nemo auditur* requirement. From this perspective, in those practical situations where the 'redirection' of the conduct of a subject of law does not concretely entail the application of the sanction of nullity, the discouragement or restoration of a balance between the attitudes of the parties to a civil legal act can also be implemented on the basis of the rule *nemo auditur propriam turpitudinem allegans*. Naturally, the correct solution will have to take into account the whole situational picture corresponding to each individual case.

In addition, the delimitation of nullity from other causes of ineffectiveness which could affect the legal act completes the plan for observing this civil law legal sanction.

The second legal institution we studied, in Section 2, is unpredictability (hardship), a complex and controversial legal algorithm that for the first time benefits from express legislative enshrinement in the current Civil Code<sup>9</sup>.

Unpredictability can only be understood by observing it in relation to the binding force of the contract, the latter being one of the central pillars of contract law, since the security and stability of contractual legal relationships cannot be fixed without respect for the word given. However, there are situations in which the moral imperative of keeping one's word is even

---

<sup>9</sup> See Article 1.271 of the Civil Code - version in force on 3 January 2023.

unfair in the face of possible damage and negative impacts that have become objectively imminent.

These categories of situations or events, which, *inter alia*, fulfil the conditions of being subsequent to the moment of conclusion of a legal act, being of an exceptional nature and having an impact on the cost of performance of the obligation or on the value of the consideration, and therefore seriously disturbing the contractual balance, may be considered as being outside the scope of the performance of the given word, by applying the mechanism of unpredictability.

The concept of unpredictability was formed at the congruence of several legal principles and in response to various economic needs or stringencies that are more evident on an international scale. Catalysed by the principle of good faith and fairness, English hardship or unpredictability, with a long history of application in other jurisdictions and in international transactions, is also enshrined in Romanian civil law with the aim of providing a lever to restore contractual balance in certain situations.

Unpredictability has been and continues to be a hotly debated topic. While the positions confirming the usefulness of this mechanism are to be found in the area of the hegemony of good faith and fairness, those who take a position contrary to the applicability of good faith in such situations offer as their main argument the importance of the binding force of the contract which implies, beyond the rule of symmetry, conformity in performance and the imperative of performing the contract exactly and in good faith; in other words, as the law of the parties, the contract implies the imperative of its exact performance.

However, an absolute view has to be approached delicately, especially when it concerns an entity as complex and living as the civil contract. Thus, even in the case of a principle which seeks to ensure and protect the achievement of the purpose for which the parties have met their will, exceptions will be noted on the contractual platform.

Thus, to the extent that the contractual climate is unbalanced as a result of unforeseeable events beyond the control of the parties, a mechanism is needed to restore this balance in order to harmonise the parties' performances in an equitable manner and to safeguard the purpose of the joint wills which have been propagated in the contract concluded by them. The importance of such a mechanism has long since been established and was formerly known as the *rebus sic stantibus* rule.

The triggering of the unpredictability, a legal tool capable of temporarily suspending the binding force of the contract, must meet a number of conditions. These are a subsequent change in the circumstances of the contract since it was concluded, the reasonable impossibility of foreseeing such a change and the debtor's lack of undertaking of the risk for such a change. Further, it is necessary, in order to invoke the mechanism of unpredictability, to attempt within a reasonable time and in good faith to negotiate the contract with a view to restoring its fair and reasonable equilibrium.

We also observe in the case of the theory of unpredictability the standard of good faith and the rigor of fairness. These are most clearly seen in the light of the implied obligations<sup>10</sup> of good faith, i.e. the obligations of contractual cooperation, loyalty, consistency, and the prohibition on invoking one's own unfair conduct. Of course, the existence of bad faith in the form of a breach of one of the aforementioned obligations would make it impossible to activate the mechanism of unpredictability because of the debtor's failure to act in good faith. It can therefore be concluded that the invocation of one's own unfair, inconsistent, etc. entails the loss of the possibility of adapting the contract or terminating an unbalanced contractual relationship to the detriment of the debtor, with the corresponding consequences, since no one can rely on his own dishonesty, fault or turpitude in order to obtain legal advantages; however, through its effects of adapting the contract or terminating it, the application of the rule of unpredictability offers a legal advantage to the parties to the unbalanced contract, more specifically, to the party who has felt this imbalance negatively.

In Section 3 of Chapter II we address what is, in our view, one of the most obvious materialisations of the principle *nemo auditur propriam turpitudinem allegans*, namely the exception of non-execution. This lawful or justifiable ground for non-execution, similar to the unpredictability<sup>11</sup>, operates on the matrix of refraining from practising or engaging in conduct that one does not wish to confront or experience from another person; more broadly described as respect for the rights of others in relations between private persons, hence a conduct of respect for freedom and rights in "horizontal relations"<sup>12</sup>.

---

<sup>10</sup> See L. Pop, I.-F. Popa, S. I. Vidu, *Curs de drept civil. Obligațiile*, Ed. Universul Juridic, București, 2015, pp. 108 – 113.

<sup>11</sup> C. Chabas, *L'inexécution licite du contrat*, LGDJ, Bibliothèque de Droit Privé, Tome 380, Paris, 2002.

<sup>12</sup> See V. Stoica, *Dreptul material la acțiune în materia drepturilor reale principale*, în *Revista Română de Drept Privat* nr. 4/2018, p. 20.

The leverage offered by the *exceptio non adimpleti contractus* has been recognized for a long time, especially in the literature, but in Romanian civil law, it was expressly enshrined for the first time in 2011, the year of entry into force of the current Civil Code.

Succinctly, the exception of non-performance is seen as a right of a party to a contract to refuse to perform its contractual obligations, as long as the other party does not itself perform the obligation which, according to the same contract, it owes to the former<sup>13</sup>.

What we are particularly interested in, in our analysis, is the basis of the exception of non-execution. Thus, although the way in which the requirement of the principle of *nemo auditur* takes the form of this justified ground for non-performance is obvious from the very manner in which it operates, an eloquent argument in support of the claim that the *exceptio non adimpleti contractus* is a concretisation, a materialisation of *nemo auditur* is provided by the very basis of the former. In this respect, we shall note that the exception of non-performance is based on the legal connection revealed by the mutuality of the obligations of the parties to a contract, which, based on their concordant will, are founded on the principles of equity and good faith<sup>14</sup>.

For a contractual party to be able to exercise the right to suspend the performance of its own obligation, it must cumulatively fulfil a number of conditions.

It is therefore necessary that the reciprocity of obligations should arise from the same synallagmatic contract, i.e. be the result of the same legal relationship. Further, the non-performance of the other party will have to be total or partial, but always of considerable importance, irrespective of the cause for non-performance. At the same time, the mutual obligations in relation to which non-performance is being considered must both have reached the moment of enforceability<sup>15</sup>. Furthermore, the contractual relationship must operate according to the rule of simultaneous performance of obligations. Last but not least, the final condition must be emphasised, since, just as no one is allowed to obtain an advantage by invoking his own improper or unfair conduct, etc., it is not permissible in the case of the

---

<sup>13</sup> F. Terré, Ph. Simler, Y. Lequette, F. Chénéde, Droit civil. Les obligations, Ed. Dalloz, Paris, 2019, p. 822.

<sup>14</sup> L. Pop, Tratat de drept civil. Obligațiile. Vol. II. Contractul, Ed. Universul Juridic, București, 2009, p. 715.

<sup>15</sup> L. Pop, I.-F. Popa, S. I. Vidu, Curs de drept civil. Obligațiile, Ed. Universul Juridic, București, 2015, pp. 204 – 206.

exception of non-performance for the party wishing to avail himself of this right, which is seen as a legal advantage, to have generated or contributed to the other party's refusal to perform.

Only by fulfilling all the conditions can the legal advantage offered by the mechanism of the exception of non-execution be obtained through its effects, i.e. the provisional suspension of the performance of the obligation incumbent on the person invoking this legal lever. Otherwise observed, through the effect of *exception non adimpleti contractus*, the binding force of the contract is temporarily suspended, for equitable purposes, in a preventive-pressurising manner.

The discussion of the institution of the exception of non-execution opens the way to the analysis of other civil law mechanisms which have functionalities, foundations, effects or other similarities with the adage of turpitude and which we have proposed to study in **Chapter III** - Other applications of the principle *nemo auditur propriam turpitudinem allegans*.

In a first section, we focus on unjust enrichment, another kind of legal hybrid which, having emerged timidly during the Roman law period, still in the gravity of the *condictio* variety, claimed its full independence, namely that of a distinct, self-contained source of legal obligations, much later, in 1892, in the French legal system<sup>16</sup>.

Unjust enrichment is the well-known lawful legal act which involves the enrichment of the patrimony of one person at the expense of the separate patrimony of another, without any legal basis for this phenomenon. What guided our attention in our research was the existence of a strong moral responsibility or duty in the configuration of unjustified enrichment<sup>17</sup>, as well as the foundation of equity, essential values also found in the structure of the principle *nemo auditur propriam turpitudinem allegans*.

The conditions necessary to generate an obligation of restitution on the basis of unjust enrichment, whether material or economic, as well as legal, reveal the complexity of this legal fact.

Thus, the admissibility of the action *de in rem verso* depends on the existence of two correlated phenomena of enrichment and impoverishment which, as a result of a single cause, have occurred in two separate estates. One of the most important conditions for the existence

---

<sup>16</sup> Court of Paris in Boudier v. Patureau-Miran.

<sup>17</sup> F. Terré, Ph. Simler, Y. Lequette, F. Chénéde, *op.cit.*, 1370.

of unjust enrichment is, as the very name suggests, the absence of a basis, a cause justifying the occurrence of the two correlated phenomena.

Further, it is necessary that the enriched person has not culpably participated in the increase of his patrimony, otherwise the rules of other legal mechanisms with punitive implications are applicable, and this in order to fully compensate the damage created by his culpable act to another person; it may be pointed out in this case that, even in the case of unjust enrichment, similar to the solution offered by the *nemo auditur* rule, the enriched person cannot plead his own fault in order to evade the obligation to make good in full the damage created, with the particularity that, in the case of application of the *actio de in rem verso*, the enriched defendant is required to pay back only to the extent of his enrichment.

Last but not least, it is necessary that the leverage offered by the plea of unjust enrichment be the only legal recourse available to the impoverished person.

We have previously observed how a facet of the double limitation of restitution corresponding to unjustified enrichment operates; we consider that this double limitation is the consequence, among others, of the foundation of the moral and equity obligation found in the structure of *actio de in rem verso*; as such, even the person who is deprived cannot obtain more than the amount by which his patrimony has been reduced, regardless of the level of the correlative enrichment of the defendant's patrimony.

The section dealing with unjust enrichment is followed, in the second section, by a look at certain aspects of abuse of rights. A foray into understanding the correlation between the principle of *nemo auditur propriam turpitudinem allegans* and abuse of rights cannot, in principle, be made without placing the basic ideas describing the concept of civil subjective right. From this perspective, we have also included in our observations general elements concerning civil subjective rights.

In connection with these, more specifically with the exercise of subjective civil rights, the question of abuse of rights also arises. Civil rights must therefore not be exercised in an unreasonable, unfair or abnormal manner, but only within their internal and external limits. Exceeding the legal and material limits of a subjective civil right is the prerequisite for abuse of rights, which, as we pointed out earlier, is the materialisation of a right *in violation of the*

*principles of its exercise*<sup>18</sup>. From this point of view, it has been established that the exercise of a civil subjective right must respect the law and morality, its internal and external limits and good faith. Therefore, it has been stated that the holder of a civil subjective right commits an abuse when he exercises the right in bad faith, diverting it from its legal purpose<sup>19</sup>, by changing the course of an exercise within the rigours laid down by law, in an abnormal<sup>20</sup>, unreasonable manner, in bad faith or with the intention of harming or likely to harm another person.<sup>21</sup>

In principle, the general sanction that applies in situations of abuse of rights is the deprivation of the holder of the right exercised abusively of the benefit that consists in the support of the judicial body, more precisely the denial of the benefit of the coercive force of the State insofar as the person guilty of abuse would seek to be heard by the courts. From the point of view of the basic system of penalties for abuse of rights, we can therefore see the obvious similarity and correlation between this and the principle *nemo auditur propriam turpitudinem allegans*.

In other words, no one can be heard by the courts and no one can obtain legal benefits or advantages (the coercive support of the State is a legal benefit), insofar as it is based on his own unfair, incorrect, inconsistent, fraudulent, dishonest, bad faith, culpable, injurious, etc. conduct (abuse of rights is an eloquent example of *turpis* conduct, i.e. the unreasonable, bad faith, injurious exercise of a subjective civil right).

Abuse of rights is expressly enshrined in the current Civil Code, where the platform in which it can be observed is outlined; the legal mechanism of abuse of rights receives, from the regulatory perspective, only a variant definition in the form of a negative requirement, namely the one we referred to above, respectively the prohibition of exercising a right in an excessive or unreasonable manner or with the aim of harming another person, either contrary to good faith.

The last aspect highlighted in the definition of abuse of rights provides the overall result for the issue of remedies applicable to situations of abusive exercise of a civil subjective right.

---

<sup>18</sup> Gh. Beleiu, *Drept civil român, Introducere în dreptul civil. Subiectele dreptului civil*, Ed. Universul Juridic, București, 2007, pp. 86 – 88.

<sup>19</sup> G. Boroi, *Drept civil. Partea generală. Persoanele*, Ed. Hamangiu, București, 2008, pp. 87 – 89.

<sup>20</sup> For more details on the definition of abuse of rights, see I. Deleanu, *Drepturile subiective și abuzul de drept*, Ed. Dacia, Cluj-Napoca, 1988, pp. 37 – 51.

<sup>21</sup> M. Nicolae, *Drept civil. Teoria generală. Vol. II. Teoria drepturilor subiective civile*, Ed. Solomon, București, 2018, p. 609.

Thus, given the abstract nature of abuse of rights as representing, in fact, a violation of the general principle of good faith, the scheme of remedies applicable will also be that corresponding to the disregard of this essential doctrine of good faith. In practice, the main mechanism for remedying the consequences of abuse of rights will be through contractual or tortious liability, depending on the case; also, given their capacity to cover a large part of the damage created, the victim of an unreasonable, abusive or bad faith exercise of a right may be awarded damages.

There are also less intuitive but very interesting remedies, such as temporary suspension of the wrongfully exercised right or, in exceptional circumstances, even its loss. Of course, there are a variety of remedies for situations of abuse of rights, and for several reasons. Its very regulation provides a framework that can be creatively explored by doctrine and specialist practice, so that even the scheme of remedies can receive some of the most novel orientations.

Interestingly enough, this abstract and flexible character of abuse of rights has created research perspectives also from the perspective of the obligation of coherence and the principle of *venire contra factum proprium*, mechanisms that are of particular interest in our analysis, since the demonstration in this paper wishes to highlight the fact that what catalyses these legal concepts is the very principle *nemo auditur propriam turpitudinem allegans*. Without overlapping entirely with the scope of the prohibition of invoking one's own turpitude, the principle of coherence<sup>22</sup>, as well as the prohibition of contradicting oneself to the detriment of another, represent novel concepts that offer similar insights to those revealed by *nemo auditur* and are useful to observe comparatively.

Further on, we have dedicated the last section of the third chapter to the Civil Code in the aspects not previously mentioned and to highlight those provisions, concepts, mechanisms or legal institutions that can be studied from the perspective of the principle *nemo auditur propriam turpitudinem allegans*.

It is important to underline the approach taken to observe the nature of *nemo auditur as* a principle of law. From this perspective, the identification of the legal DNA of the rule of turpitude that preserves the essential rigours of equity and morality transposed into law, the

---

<sup>22</sup> For an extensive analysis of the principle of coherence in contractual matters, see D. Houtcieff, *Le principe de coherence en matière contractuelle*, Ed. Presses Universitaires D'Aix-Marseille, Faculté de Droit et de Science Politique, Aix-en-Provence, 2001.

inclusion of *nemo auditur* in the vast sphere of the doctrines of good faith, as well as its perennial nature in legal life, together with its flexibility in analysis and application, led us to a novel conclusion. More specifically, these elements, as well as other aspects and hypotheses that the research revealed to us, pointed us in the direction of observing the adage *nemo auditur propriam turpitudinem allegans* as a genuine principle of civil law, of a secondary nature and applicable in a sectoral manner to certain legal institutions.

This was the perspective that guided our research itinerary from the level of mechanisms and concepts regulated in the national civil codification. We have approached, in the diversity of civil law areas, those concepts found in the various legal provisions which, either directly, as is the case, for example, of non-execution attributable to the creditor enshrined in Article 1.517 of the Civil Code, or indirectly, present the rigour proposed by the principle *nemo auditur*. Briefly, the angle of observation has been composed from the perspectives of *nemo auditur* to represent a particular requirement of fairness, morality and good faith, with poles of focus for the requirements of behavioural consistency, loyalty, prohibition of inconsistent, inconsistent, bad faith or abusive conduct.

**Chapter IV** of our paper closes the picture of the proposed research by addressing some captivating and original themes, in which the *nemo auditur* principle is observed in comparison with its counterparts from other legal systems, namely the Anglo-Saxon Doctrine of *Estoppel*. The other novel topic discussed deals with contemporary challenges that are not, of course, limited to the sphere of the rule of tort, but have a considerable impact on the overall plan of civil law, especially on the area of contractual relations, we refer more specifically to the innovations of the digital era, known as *smart contract* and *blockchain*.

Concerning the active concept in the Anglo-Saxon legal system, the doctrine of *estoppel*, we note that it is a rule essentially based on the value of equity. Although *estoppel* has developed in an excessive ramification, and there are numerous varieties of this doctrine, named differently according to the period or the courts of law in which they find their applicability, the common or major common core that is found in this macro-rule is represented by the requirement of compliance with a promise made or the appearance created to another by conduct, attitude, acts or deeds.

However, observing the types of *estoppel* that have crystallized as the main manifestations of this doctrine, we will note the specifics of each, as well as the different

content, conditions, spheres of application and effects they have. Thus, varieties such as *estoppel by conduct*, *estoppel by convention*, *estoppel by deed*, *estoppel by representation*, *promissory* or *proprietary estoppel* or *estoppel by record* will be found in the legal ecosystem conducive to their application, namely *common-law* systems.

Even so, the international level, where uniformity of the main legal mechanisms of the various jurisdictions is necessary, applies the doctrine of *estoppel* by referring it to a coherent, loyal conduct, as well as by the trajectory of a principle derived from the requirement of *estoppel*, namely the prohibition of auto-contradiction to the detriment of another.

Rooted in the principle of equity and the general duty of good faith, the comparative analysis of the doctrines of *estoppel*, both in their Anglo-Saxon version and the European perspective of non-contradiction, reveals numerous "points of tangency" with the legal hybrid *nemo auditur propriam turpitudinem allegans*.

Not least, a challenge for the flexibility and adaptability of the principle of turpitude and, further, even for the evolution of civil law in general, is the era of digitization, a period which has generated, among other things, innovations with an impact in the legal sphere, referring in particular to *smart contracts* and *blockchain* technology.

*Smart contracts* and *blockchain* innovations are still mechanisms untouched by the Procrustean bed of the reality of the outside world, so their observation and analysis, especially from a legal perspective, will be gradual, for an organic and solid understanding of the impact and effects of such elements that are vehicles for transplanting real situations into the virtual world.

The chapter dedicated to these technology elements provides an overview, linking them to certain main levels of contract law, starting from the definitions or attempts to define *smart contract* and *blockchain*.

Thus, these technological entities present numerous difficulties for the legal area right from the moment or, more precisely, from the way they are formed and the way they are verified for the essential conditions of capacity, consent, offer and acceptance.

It was also interesting to note the particularity of justified causes of non-performance that could affect obligations arising from *smart contracts* or decentralised *smart contracts*.

Despite efforts to standardise the legal approach to these technological mechanisms, the authorities of the various European countries or bodies have realised that they are in the presence of a far-reaching process that is still in its infancy. However, legal practitioners, faced with the challenges arising from the intersection of civil law and information technology, even in the form of *smart contracts* and *blockchain*, are adopting a solution that seems to be the only compromise that can mitigate the advantage/disadvantage flux arising from these technologies. So, whether we are talking about mitigating the risks that might result in the event of force majeure or fortuitous impossibility of performance, the proposed compromise is that of *wrapper contracts*, which essentially entail the transposition of information from the level of a *smart contract* into the plane of a traditional contract.

In any case, studies, analyses and solutions offered in relation to the dynamics between these two great sciences, law and technology or digitisation, are constantly being explored, and until the direction of approach is identified and standardised, the law remains the superior force, and the code language of a computer is not law, just as law cannot be assimilated to computer code. However, although the challenges that the rapid development of technology and digitisation have propagated to the field of law are numerous, civil law's capacity for assimilation and absorption can accommodate a multitude of 'revolutions' and difficulties that present-day developments generate.

We have methodologically configured the research, which we want to have an overview and holistic view of the principle *nemo auditur propriam turpitudinem allegans*, on directions of analysis involving, in a first stage, the historical-teleological method. Since we wish to demonstrate, among other things, the legal perennality of the adage of turpitude, this could not be achieved without viewing the historical context in which it came into existence.

Further, since the purpose of our research is complex, we have addressed elements of study corresponding to the logical method, namely by using syllogisms and various reasoning and methods of interpretation of legal rules, mechanisms and institutions of civil law.

Observing what we have called the legal DNA of the *nemo auditur* principle, based on the values of equity and morality, we have led directions of discussion according to the sociological method, to observe the synchrony that the rule of turpitude has in relation to the outside world and the realities generated by collective knowledge, but also by the flow of the evolution of society and the human core.

Last but not least, the comparative method proved to be a useful technical procedure by observing the quasi-omolog of the Anglo-Saxon *nemo auditur*, namely the *estoppel* rule bundle. The trend towards the internationalisation of the essential rules of civil law is intensifying, especially in view of the scale and development of relationships and transactions that go beyond the scope of a single jurisdiction. This is just one of the reasons why it is appropriate to take a similar and integrative look at legal mechanisms or institutions which, belonging to different legal systems, are not identical but sufficiently tangential to provide the basis for a comparative analysis.

The approach proposed by our study is intended to be a courageous one, and this aspect is revealed right from the starting point of the choice of approaching a principle that is not only unregulated, but also with a history of controversy and briefly or incompletely analyzed in legal literature. Nevertheless, we are confident that this complex and original exercise that we have initiated will prove its usefulness in discovering new possibilities for the evolution and effectiveness of this fundamental principle of fairness and the corresponding principle of good faith, as well as other rules or mechanisms belonging to this vast doctrine of a high standard of legal conduct.