SUMMARY

AUTHORIZATION THESIS

CIVIL PROCEDURAL LAW

AUTHOR:

University Professor Traian Cornel Briciu, PhD

The paper is divided into three sections, corresponding to the scientific and professional achievements, scientific activities as a team and to the coordination of projects, future projects regarding the research and teaching plan.

Section I: Scientific and professional achievements

The scientific research activity was dictated by two issues: i) the research direction imposed by the doctoral thesis, namely the provisional measures in the civil proceedings; ii) the historical moment of the adoption and the entry into force of the new Code of Civil Procedure.

A. The analysis and the contribution with regard to the protection of the subjective rights by means of provisional measures.

The scientific research in the field of the protection of the subjective rights by means of precautionary measures have been materialized in a monograph on the provisional measures and other studies published in prestigious journals, the systematization of the part regarding the precautionary and provisional measures in the new Code of Civil Procedure as well as their explanation in the comments on the new Code civil procedure.

The results of the scientific research have contributed to: **i)** the clarification of certain legal concepts such as *"receivable ascertained in writing",* the existence of a "*lawsuit*", the applicability of the distraint upon the shares, the *„ plentiful guarantee"*, ***periculum in mora*** and ***fumus boni iuris*** (in Romanian case law); **ii)** the systematization and unification of rules on provisional and precautionary measures in the new Code of Civil Procedure, including the regulation of the distraint upon civilian ships; **iii)** the unification of the jurisprudence with regard to the association between the precautionary measures taken in the criminal proceedings and the rights of creditors over the goods targeted by these measures, by the promotion of a concept based on fluidity and safety of the civil circuit.

B. Contribution to the conduct of the lawsuit (civil trial) in the spirit of the article 6 § 1 of the European Convention on Human Rights.

The contribution to the analysis of the lawsuit (civil trial) in light of the compliance with the requirements imposed by Article 6 § 1 of the European Convention on Human Rights was manifested, in particular, in relation to *the effectiveness of the free access to justice* and *the existence of an independent and impartial tribunal* established by law.

The issue of *the free access to justice* requires first to analyse its effectiveness. The right of access to justice is not absolute. It can bear some limitations, *de jure* or *de facto*. I analysed the issue on the proportionality between the necessity to collect the judicial stamp in order to finance the justice and the implications with regard to the limitation of the access to justice, by trying to identify those modalities to promote an interpretative vision that would be compatible with the requirements of Article 6 § 1 of the European Convention on Human Rights and the jurisprudence of the Strasbourg Court in this area.

As regards the *impartiality of the tribunal,* I have addressed the issue of the compatibility of our civil procedural legislation with the rules arising from the jurisprudence of the Strasbourg Court. The practical goal of the results of the research in this field is represented by the fact that some of the proposals formulated as consequence of the scientific research are found in the new Code of Civil Procedure: *the extension of the incompatibility cases with regard to judges who have ruled in the case and the remedies at law* (review and appeal for annulment), *the extension of the disqualification cases with regard to the judge who acted as lawyer for one of the parties in the same case,* the flexibility of the regulation on incompatibility cases by the introduction of the point 13 of the article 42, NCPC –*"when there are other elements that rightly rise doubts on his impartiality "*- text that allows to maintain domestic jurisprudence in accordance with the European law.

With regard to the *independence of the courts,* I have deepened the analysis of two issues that may arise in connection with ensuring the independence of the judiciary towards the legislative and executive power – *the distinction between courts and the Public Ministry, composed of prosecutors* and *the functionality of the Superior Council of Magistracy.* As regard to the first issue I firmly supported that that prosecutors, constituted in prosecutor's offices composing the Public Ministry, do not exercise the judicial power, because they do not have jurisdictional competences to order the law in favour of one or the either party. In relation to the second issue, namely the functionality of the Superior Council of Magistracy, the findings of the research have led to the necessity of a reform of structure of the Superior Council of Magistracy in order to ensure the trust of the society in the ability of this body to manage the internal problems of the system by defending the independence of the judges, but also by sanctioning mistakes or abuses made by judges and public prosecutors.

C. The reform of the judicial system.

The reform of the judicial system from the perspective of the lawsuit (civil trial) has been a constant concern in the scientific research, after having obtaining a doctorate in law.

In a first phase, the approach of the reform of the judicial system had two directions, determined by aspects appreciated domestically and also in Europe, through the Mechanism for Cooperation and Verification (MCV) as main vulnerabilities: *the inconsistent interpretation and implementation of the law by all courts* and *the slowness of judicial proceedings*.

The consistent interpretation and implementation of the law by all courts represents an issue of safety and predictability of civil legal relations *lato sensu* and a fundamental condition for a unitary and national State.

The scientific work carried out in connection with the unification of the jurisprudence consisted of: i) supporting the legal thesis according to which the High Court of Cassation and Justice must overtake its role as fully competent court to judge second appeals; ii) formulating points of view used in the procedure for resolving the appeals in the interest of law or, after the coming into force of the new Code of Procedure, the preceding decisions for clarification of legal aspects; iii) explaining within studies, commentaries, presentations at conferences organized in academia or in the legal professional environment of the reasons and the modality to implement newly introduced institutions or significantly modified ones, according to the new Code of Civil Procedure; iv) publication of studies after the intervention of the Constitutional Court on texts of the new Code of Civil Procedure.

The issue regarding the judgments acceleration was analysed in correlation with the principle of judging the case within a reasonable term, that domestically acquired a completion having the capacity to extend it to the notion of “optimal and predictable term".

D. The analysis of the judiciary system in connection with the organization of the legal professions.

The study “Judicial institutions" represented a concern that reflects the vision regarding the analysis of the lawsuit from a broader perspective that includes, beyond law enforcement techniques, the exploration of the organization of courts and prosecutors’ offices, the by-laws of judges, prosecutors but also of lawyers, bailiffs and public notaries, as well as of the fundamental principles of justice as public service. The analysis of the “Judicial institutions” includes i) the overall issues on the courts and prosecutors' offices; ii) the personnel - judges, prosecutors and their auxiliaries, partners of justice - lawyers, bailiffs, public notaries; iii) the operating principles of justice as public service.

The expansion of the scientific research in this area is based on: i) *tradition* – the issue of the organization of the judiciary system has been approached in the treaties / courses of Civil Procedural Law; ii) the belief according to which the issue of the "reform of the judicial system" requires an integrated approach of the "lawsuit" and the "judicial institution" issues.

The scientific research in the field of the "judicial institutions" followed three directions: a) historical; b) comparative; c) focused towards finding solutions to the judicial system vulnerabilities.

The results of the scientific research have included argued and well-founded opinions on topics that are of interest to the legal world, society and politics: the specialization of courts (specialized courts versus specialized sections/panels), the position of the Public Ministry within the State powers, the ability of the Superior Council of Magistracy, in its current structure, to respond to society's expectations concerning the management of the judiciary issues, the ideal formula for recruiting judges and prosecutors (youth *versus* previous experience; the election of judges *versus* appointment), the professional secrecy of the lawyer, seen not as a privilege of the lawyer, but as a right of litigant.

Section II: The scientific work as a team. Coordination of projects.

The scientific activity as a team had as main direction the achievement of the project to support judicial reform in three stages: i) the public awareness of the rationales that have imposed new institutions in the civil procedure; ii) the explanation form the historical, comparative and inter-linked perspective of the new institutions in the Code of Civil Procedure; iii) identifying the best solutions to overcome the dysfunctionalities occurred while applying the new Code of Civil Procedure; iv) supporting the efforts to reform the justice in the Republic of Moldova .

Teamwork involved the coordination of the Committees that drafted the amendments of the Law No.51 / 1995 on the organization and the practice of the legal profession, the by-laws of the legal profession as well of the Committee in charge with drafting the Code of Ethics of the Romanian lawyer.

Section III: Projects for the future.

With regard to the project for the future, the career development is dependent on continuing the research directions lately followed.

As far as the research level is concerned, I intend to: i) create an integrated theory of the judicial function in terms of provisional measures; ii) draft a treaty of civil procedure law that would valorise the doctrine and the jurisprudence arisen after the entry into force

of the new Code of Civil Procedure, in the spirit of the analyse of institutions by the use of their historical evolution, their sources of inspiration and by reference to the fundamental principles of the lawsuit (civil trial); iii) further analysis on the organization of courts, prosecutor's offices, legal professionals and their institutions in order to develop those theories to ensure their proper functioning and efficiency of justice.

As far as the teaching level is concerned, I shall develop teaching methods that ensure the students the closest experience to real legal life, in order to ensure their socio-professional insertion.