Habilitation Thesis

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Abstract

The first part of the habilitation thesis was dedicated to the scientific and professional achievements. I have mentioned my teaching career, which has started in 1994 at the Faculty of Law of the West University of Timisoara and continues up to this day, as well as the activity as a visiting professor in Romania and in France.

I have described the research and the other activities conducted with my students in international law: the various translations of legal documents and constant attendance at international moot court competitions in the field of International Law and of International and European Law of Human Rights.
Further on I presented what I found worthy of being mentioned regarding my scientific achievements. My scientific research has been conducted in three fields: public international law, international human rights law and constitutional law.

I have structured in four sections the presentation of my research in international law, which finally resulted in the publication in 2010 of the treatise *Drept international* [*International Law*], a revised and supplemented version of *Drept internaţional public* [*Public International Law*] which had been published in 2004. In the first section I have presented the current areas of interest in the international law doctrine. I have shown to what extent can international law be considered as being part of the international order and I have evoked the debates regarding the law-making process, the hierarchy of the legal norms in the system and the fragmentation of the international legal order. I have shown that, in my opinion, neither the normative inflation, nor the fragmentation of the legal order are phenomena capable of affecting the stability of the legal system. The main issue for the system's unity is that it is challenged from the perspective of the relation between law and morality.

In the following three sections I have presented some of my legal analyses which I consider relevant for my scientific research. I have asserted that the distinction between the the legal norms of *jus strictum* type and those of the *jus aequum* type has marked the entire history of the international law. The privileged place which customary rules have in the system is consistent with this distinction. I have elaborated the arguments which refer to the importance of this distinction in the application of international law.

In the following section I have discussed about the tripartite structure of the norms in international law: beside the rules, which are the most numerous in the system, this contains the principles and the standards. When I referred to principles I was thinking about the quality of a certain type of legal norm and not about the source of law which bears this name, i.e. the general principles of law. I have discussed this subject in the context of the validity criteria of legal norms as they were exposed by the European Court of Human Rights and I have analyzed the problems concerning the application of principles and standards.

In the last section, dedicated to the relevant scientific contributions, I have described my contribution to the theory of treaty interpretation published in the volume *Doctrină şi jurisprudenţă internaţională* [*International Jurisprudence and International Decisions*] published in 2004. I have mainly described the combination of rules and directives of interpretation which is implied by the "general rule of treaty interpretation" from the 1969 Vienna Convention. It is an important subject because this general rule guides and has to guide the judicial interpretation of both international tribunals and the national ones, when the latter apply the international law.

Regarding my research in the field of international law of human rights, which resulted in several articles, I have mentioned the analysis of "theory of the subsidiary control" of the protection of fundamental rights realized by the Court of Strasbourg. I have also mentioned the problems that occurred in our national judicial system when it had to apply the international law of human rights. For instance, the difference between the minimal legal reasoning of the national

decisions and the dissertation type of the international judgments. Or, how may an municipal judge legitimize an interference contrary to the European Convention of Human Rights, using the criteria of the “necessity in a democratic society".

At the end of the first part, I mentioned the research in constitutional law, mainly the one in the study *“Constituția României privită din perspectiva supremației dreptului”* [*Roumanian Constitution from the Standpoint of the Rule of Law*] in 2010.

I have demonstrated that our legal system has the resources to solve the so-called "praxeological inconsistency“. And that there is no need to reform the Constitution in order to solve existing or apparent normative antinomies. I sustained that the reform of the Constitution can only be justified to improve the separation and balance of powers and to eliminate certain illiberal provisions, for example, the dependence of the Constitutional Court to the Parliament.

The second part of the thesis, which concerns the plans for career development, describes three research projects which I am already working on and hope to complete them in the next three to four years.

The first project,whose temporary title is ‘*Interpretation of international law, European human rights law and Constitutional law’* is in an advanced stage. I have already written several chapters and decided to publish starting this year parts of the future volume. I tried to argue that the judge’s decision to use in the motivation one of the three methods of interpretation must be in correspondence with the nature of its competence, i.e. mandatory or conferred to by the parties. I have analyzed the classical topics of interpretations: justification of the interpretation, the problem of authentic interpretation, textualism vs. inquiring the intention or textualism vs. evolutionary interpretation etc.

The second project is a new handbook of International Law, in two volumes, the first of it devoted to general international law and the second to the special

international law. This time the focus will be shifted to case-law and the analysis will address issues related to the effectiveness of international law.

Finally, the third project is a handbook of European Human Rights for the students of masters degree. A substantial part will be devoted to the way the European judges justify the solutions they adopt and the similarities between European law of human rights law and International law and between European law of human rights and constitutional law.