LA CULTURE JURIDIQUE ET L'ACCULTURATION DU DROIT ROMANIAN NATIONAL REPORT

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The universality dimension, which comparative law attaches to the juridical science, is shown by the aspiration of law to surpass its national condition, to become a universal phenomenon.

The universalism of comparative law consists, at least virtually, in the fact that the comparative research is not confined to the confrontation among several States appreciated to be the bearers of a superior civilization, but instead, all juridical systems in the world are considered.

In the era of national States that have annihilated such universalism, we witness a new manifestation of this ideal, in the form of its conciliation with the State's sovereignty principle by means of legislative standardization or unification in important juridical areas.

This trend towards universality is particularly obvious with comparative law, for comparing the rights brings into relief not only what is different but also what is similar, that convergence zone of the common normative stock incorporating the precepts of a general ethics, metajuridical in nature.

The universal value of comparative law is conferred by the great systems of law theory, each grouping together the national systems in terms of the common origin, the sources of law system, and the interference of neighbour or complementary institutions of the same juridical order with the term to be compared.

At the same time, integration of the juridical order with the system is achieved in terms of the fundamental elements that give the amplitude of the value scale, which the juridical order expresses in the form of a certain social, moral and political outlook. Last but not least, the comparatist has to research and perceive those hidden relationships that link the juridical order to the social, economic, political, ideological and cultural context, to consider it in its historical environment and understand it terms of the relationship between these factors and the juridical order.

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Most comparatists refer to the Roman-Germanic system, the common-law system, the great religious and traditional systems, and the African customary systems, which were the sources of other juridical systems, such as the mixed system of Roman law and common-law, the German-Scandinavian system, the French-Latin-Germanic system, the French-Latin system, with a large number of populations and jurisdictions. Restoration of the communist regime in Russia and in a number of States in Europe, Asia and later in America, following the Second World War, led to the establishment of the socialist system of law, changing for the first time the dimensions and the significance of the comparison, bringing along the confrontation between the bourgeois system of law and the socialist system of law.

The events taking place after the year 1989, marked by the collapse of the Berlin Wall and the world socialist system, in most of the States it was made up of, Romania included, led to their return to the old families of law they had belonged with, most of them to the great Roman-German system of law.

The grouping of the national juridical systems into the various systems or the great family of law is achieved in terms of their common characteristics.

The religious and the traditional systems, even if obsolete, group together a numerous population and a large number of jurisdictions, so they cannot be ignored. The difficulties encountered when trying to fit these systems into the classifications attempted so far lie in the fact that they are dependant on the personal status, meaning that are not applicable to all persons residing in a certain country or territory, but to all those who, having a certain religion, irrespective of the country where they live, are subject to the personal status justified by the precepts of that respective religion.

This is also true for pre-war Romania, when the population of Turkish descent would practice the Islamic law and the jurisprudence magazines of the time used to publish now and then decisions made by the cadis in the litigations where the Islamic population was involved.

The great Roman-Germanic system, with which the Romanian juridical system belongs as well, holds an important place in contemporary world, for it continues the principles of the Roman law where the modern juridical concepts were forged. The differences between the two national legal systems joined together, the German and the French, are not essential ones, because they are based on a rich inheritance coming from the Roman

law, on the one hand, and the customary German law, on the other hand, which influenced not only the German legislation, but also the French custom that inspired the Napoleonic codifications.

The supremacy of the law and the tendency towards codification leave their mark on the way the system looks like, while representing an important unity-related characteristic feature, despite the national philosophical diversity of approaching the juridical phenomenon.

Assimilation of the Roman law, which entailed an identity of view, was the first stage in the universality-of-law process and conferred Europe a relatively unitary juridical system.

The collections of customs selected and ordered by legal advisers, incomplete and fragmented, lacking the systematic nature of genuine codifications, were subject to an adaptation process consisting in completing and correcting those solutions contradicting the Roman law. As a result, the substance of the customs does not reflect the Roman law in its classical form but in the form of what was called the "vulgar law". An important role with the assimilation of the Roman law was played by the glossators, who used to annotate the glossaries devoted to the classical writings, thus establishing the exact meaning of the texts, and the post-glossators, who, starting in the 14th century, considerably developed the Roman law by their interventions, laying the foundation of a new line of private law, such as the commercial and the international private law.

The work of post-glossators not only achieved the fusion between the Roman law and the provisions originating in the customs, but also enriched the former with new provisions.

Another way by which the Roman law spread in Europe was that of the codifications undertaken in various European countries.

An important role with shaping of the system of law in western countries was played by the influence of the Canonic, the Catholic and the Orthodox law had upon the development of the civil law. Assimilation of the Canonic, the Catholic and the Orthodox law took place together with that of the Roman law in some countries, while in other countries it also took place as a result of the Concordates. Nevertheless, whatever the way, the Canonic, the Catholic and the Orthodox law made their contribution to the delineation of the great Roman-Germanic system. The resulted system cannot be reduced to either of its constitutive elements; it integrates a new type of law, modern, cured from the medieval rules that represented an obstacle for the development of society.

One may say that the assimilation of the French private law by the Romanian Principalities can be definitely characterized as belonging with the Roman-Germanic law, its origins going back to the classical Roman law and the old Dacian law. Following the conquest of Dacia, the Romans tried to give the Dacian land a strong Latin characteristic and therefore bring the Roman lifestyle to the Carpathian-Danubian area.

The Roman private law applied in Dacia strongly influenced the later development of the legislation and the science of law, both during feudalism and during capitalism. What the Roman law is characterized by is the subtle elaboration of the essential relationships of private ownership and the contractual ones, related to a strong individualism, required by the social stratification and the development of the trading of goods, accentuated after the conquest of the Mediterranean basin.

Penetration of the Roman law into the territory of Dacia overlapped the autochthonous one, whose source was the custom (the practice of the land).

The edicts by the magistrates, that is, by the governors and the quaestors in the Dacian province, mediated the penetration of the Roman juridical ideas while, on the other hand, since the edict was inspired by the local custom, it paved the way for the legal sanctioning of the local law.

Being still in use, the local law regulated the relationships between the autochthonous population and their personal rights, the autochthonous population representing the great majority of the travelling population. Instead, the Roman citizens, settled in the province, had brought along the rights and the regulations in effect in Rome. Out of their private rights we should mention: the right to get married in accordance with the Roman law, the right to conclude patrimonial documents and testify in accordance with the Roman law.

Therefore, the infiltration of the Roman juridical phenomenon was not achieved on an empty ground, for the ideas of right and justice were familiar to the old inhabitants of Dacia, whom Herodotus described as "the bravest and the most correct among the Thracians". The autochthonous inhabitants of Dacia were familiar with the institution of ownership, such a natural institution with a people whom the literary descriptions and the archeological evidence show as a sedentary and agricultural people.

The research on the contents of the customary law applied in the Principalities and known as "jus Valachicum" brings into relief the existence

of Romanic elements in a number of institutions, pertaining to both the family law and the civil law, such as the adoption, the emancipation, the ownership, the matrimonial regime, the usufruct, the servitudes, the successions.

The originality of the customary law comes from the autochthonous origin of most its provisions, which however does not exclude the influence upon the entire system that the consuetudinary law of other countries has.

Neither can we claim the pure autochthonous nature of our customary law, nor can we assert that our juridical institutions are mimicked, since this would mean to neglect the historical realities. Also, to speak about the Roman origin of the Romanian juridical institutions would mean to compare two types of law belonging with two different social orders; it would mean to claim that the feudal law in the Principalities was roughly a Roman law.

The custom, as a source of law in the Principalities and in Transylvania, should be added the written laws. Their importance is not as great as that of the customs, for their application as compared to the custom was of a subordinated nature.

In 1335 there was a textbook of ecumenical law – Matei Vlastares' Alphabetic Syntagm – and later the Basilicals, known as "The Kingly Books". Referring to them, Dimitrie Cantemir shows in his Descriptio Moldaviae that, when offered the crown by the Byzantium, Alexander the Good was also offered the Greek laws from which he chose those making up the legislation of Moldova. These textbooks, which were abridged compilations of vast works, actually conveyed the principles of the Roman law.

The Putna Code of Laws of 1581 enjoyed the reputation of the oldest monument of law in the Romanian Principalities. This was added the Bistrita Moldovenească Code of Laws of 1618 and the Govora Code of Laws, which was of a canonic nature. Another Code of laws (Kermeaja Kniga), written in Slavonic and going back to the 16th century, beside the provisions pertaining to the canonic law, also included provisions pertaining to the civil law related to marriage, engagement, dowry, obligations, successions, and provisions pertaining to criminal law as well.

In addition to the Slavonic manuscript codes of laws, mention should also be made of the Eustatie's Code of Laws (1562), Voivode Matei Basart's Code of Laws (1640) and Vasile Lupu's Code of Laws (1646), all written in Romanian.

The textbook of Eustatie's Code of Laws, with a translation of Malaxos from Greek, is a mixture of canonic law, civil law and provisions of criminal law, while Matei Basarab's Code of Laws, The Law's Set to Rights, of Byzantine and Slavic inspiration, also includes, in addition to provisions of religious nature, other provisions of laic nature, related to the sharing of the inheritance, the respect of foster and natural children for their parents, obstacles against marriage, sexual offences.

The Romanian Book of Learning form the Kingly Codes of Laws by Vasile Lupu, printed in 1646 and having as source of inspiration a Byzantine law of rural police and the work of Romanist Prossper Farnaccius, is the first official laic legislation, promulgated and invested with legal authority. It acknowledges the law and the custom as sources of the law, deals in detail with such issues as the family, the natural persons, marriage, guardianship and the mental status of persons, heritage related issues, usufruct, while paying particular attention to the ability to inherit and to dispose mortis causa. At the same time, it deals with the means of protection and enjoyment of the rights by judicial and extrajudicial ways.

O. Sachelarie, referring to that period of time, points out the existence of three normative systems applicable in parallel: the customary law, which was not removed by the introduction of the codes of laws, the written law, represented by the codes of laws, and the third one, the voivodal law, represented by muniments, the latter having a limited or individual applicability, often derogatory from the written law. The next century was characterized by decisive steps towards the assimilation of the Byzantine law and the written laws.

Mention should be made of the Code of Laws of 1870 and, most of all, Caragea's Code of Laws, adopted in 1818, which, together with the Calimachi Code of Laws in Moldova, inspired by the Austrian Civil Code of 1811, were the most important normative acts applied in the Principalities before the adoption of the Civil Code. These were added the two Organic Regulations of 1831 in Wallachia and 1832 in Moldova, which gave the Principalities an institutional structure of French inspiration.

The Romanian Principalities were characterized by the fact that, in addition to the customary law and the written law, promulgated in accordance to the rules of the time, another subsidiary source of law was applied, namely, the Byzantines laws in model similar to the Roman one, processed by the medieval legal advisers in Western Europe.

This is the meaning that should be attached to a text in Dimitrie Cantemir's Descriptio Moldaviae, which confirms that “the written law in

Moldova came from the edicts issued by the Roman and the Greek emperors and from the Roman Conciliums".

In the Preface to his Code of Laws of 1818, Caragea said that "Wallachia … was forced to aspire to the Codes of the Roman emperors and to abide by those codes of laws without exception". Calimachi also, in the Preface to the Code of Laws of 1817, refers to the sources of inspiration – Justinian's and Leon's Basilicals and Additions to the Laws, and also The Synapse of Vasilicals by Teofil Antichinorul, in the Greek-Roman law. The Byzantine laws for which we have proof to have been applied in the Romanian Principalities, the Vasilicals and the Basilicals, represented the largest documents of Byzantine law joining together the legislative work of Justinian in 60 books, while the Synapse of Vasilicals is a processing of the digests.

The Calimachi Code follows the distribution of institutions made by Justinian, but instead of humbly reproducing the Byzantine legislation only keeps the books that fit the time and the social organization of the time; he also includes the customs of the country and the voivodal laws.

This entire historical excursion proves that, prior to the great codifications, the law in the two Principalities had a strong Romanic nature. The Byzantine law, deeply assimilated by the authors of the codes of laws, was nothing else but the Roman law, just like the Austrian Code that inspired the Calimachi Code is one of the most important Romanic codifications.

In 1830, the penetration of the French legislation became a massive process, either in the form of its adaptation, or in the form of total reproduction.

In 1830, the French Commercial Code was translated into Romanian and adapted as national law in Wallachia, while in 1852 Prince Stirbei adopted the Napoleonic Code. A number of laws of French inspiration preceded, in 1831-1847, the Draft Civil Code. Issued in both Principalities, the laws referred to guardianship, emancipation, et. The law adopted in Moldova in 1840, on the institution of guardianship, translated from the French Civil Code, was entirely incorporated into the Civil Code of 1864, adopted by the two Principalities, while also in 1840 Wallachia adopted the French Commercial Code.

Without being officially adopted, in Moldova this Code was translated and applied in the juridical practice. Its assimilation was therefore direct and

spontaneous, without acknowledgement of the imported law, which is relevant in terms of comparative law.

In the codification fever that had embraced entire Europe, on initiative by Prince Alexandru Ioan Cuza a State Council was established, one that was to become later a Legislative Council, tasked to elaborate a Draft Civil Code, instructed to follow the model of the French Civil Code with the amendments introduced by the Italian Civil Code; although it hadn't been promulgated by that time, it was newer and better from several points of view than the French one, which in fact it mimicked.

In relation to certain modifications of the French text of the Code, the Commission took into account the observations of Marcadé, author of a commentary on the French Civil Code who enjoyed particular authority in France and whose opinions were adopted.

The editing panel also took into account the Italian Civil Code in relation to certain issues, namely, the articles dealing with partition (743), denunciation (751, 756, 761), donation (828), the definition of a contract (942), presumption of the cause (967), the cession of real rights (971) and the effect of obligations (1073, 1074 and 1080).

For organization of the mortgage regime, the Commission used the Belgian law on privileges and mortgages as a model. On the other hand, the editing panel introduced a number of innovations, while eliminating certain provisions in the French Code. Out of the innovations enshrined by the Romanian Code, it is worth mentioning: the "ultra vires hereditatis" obligation to pay the duties and the debts of the succession (1774), acknowledgement of the universal legatee's rights to the profit (1888). At the same time, the Code provided for certain institutions that had become traditional with the Romanian law such as obstacles against marriage resulting from kinship or adoption, hostility of the man as motivation for a woman to divorce, acknowledgement of a pauper widow's right to succession, and, under the influence of Marcadé's theories, tradition was acknowledged as a means to acquire property (644).

At the same time, the Romanian legislator eliminated a number of institutions present in the French Code, such as separation from the body, officious guardianship, the curator ventrix institution, the subrogated tutor institution, civil death.

The retrograde spirit of the Code from certain points of view was highly criticized by the progressive forces of the time for such reasons as the fact that they constantly protected the position of the owners, the employers,

the creditors and the bankers, while certain provisions instituted obvious discriminations between the genders, between legitimate and illegitimate children, between employers and employees.

Nevertheless, the few shortcomings of the law, related both to the contents and the form, mainly concentrated on the distribution of the contents, the lack of accuracy and the terminological imperfections cannot diminish the positive impact that the introduction of a modern, western legislation had. The main quality of our Civil Code, inherited from the Napoleonic Code, alongside the solidity of the principles that serve as its foundation, is its perfect moderation, its balance and harmonization, which conferred its resistance in time and against the social transformations that followed the historical events.

The civil legislation and particularly the Civil Code underwent important amendments and additions. Of these, mention should be made of Law num. 21/1921 on the regime of foundations, and Law num. 319/1944 on the surviving spouse's right to inheritance. Legislated under the undeniable influence of the German law, Law num. 319/1944 places the surviving spouse from the category of irregular heirs, such as the Civil Code used to do, into the one of regular heirs of the deceased. From such a position, the surviving spouse competes with all the categories of heirs, benefits from the successional and the saisine reserve and the so-called legally formed praecipuum from the right to the house, the objects belonging with the house and the movables received as wedding gifts.

It is also worth mentioning the laws amending the Civil Code: the law of 15 March 1906 on marriage and divorce, legitimacy and adoption; the law of July 28th, 1923, on literary and artistic property; the law of 6 February 1924 on legal persons; and the law of July 4th, 1924, on the mining underground. Codification of the commercial code preceded the civil one.

The first specific provisions were to be found in the Organic Regulation of Moldova, which came into force in 1831. It defined the trading activities and instituted two commercial courts in Bucharest and in Craiova, tasked to rule in traderelated cases in accordance with "the Commercial Code of Laws of France", which was due to be translated; only what was fit for the status of the country was to be taken from the French Code.

Implementation of this provision was achieved only in Wallachia, starting in 1840, when the French Commercial Code of 1807 had been translated and applied, with the amendments undergone after adoption of the Organic Regulation.

Following the unification of the Principalities, the Commercial Code of Wallachia became in 1864 "The Commercial Code of Laws of the Romanian Principalities. Under the regulation of the French Commercial Code, adopted in the Principalities under the above-mentioned circumstances, the commercial law was legitimated and certain juridical acts and juridical deeds corresponding to production, trading and circulation were no longer governed by the Civil Code. This Code of Laws remained in effect till 1887 when a new commercial code was adopted.

The new regulation used the Italian Commercial Code as a model, which made use of the advantages of tradition and everything new in the French, Belgian and German doctrine and jurisprudence.

It is in line with the French tradition and is based on the objective system, while its norms were applicable to the juridical relationships resulted from trading deeds, irrespective of the person who committed them.

Just like the Civil Code, this Commercial Code with its numerous amendments is still in effect, although its commercial fundamentals of foreign inspiration are gone, because the Italian Civil Code of 1942, which abrogated the Commercial Code, is a unitary regulation of private law, whereas the German law of 1900, keeping the dualist concept of private law bases its commercial code on the subjective system to establish the field of application.

Extension of the Romanian legislation to the territories annexed after the First World War was an important moment with the creation of the Romanian juridical system.

The legislative unification took place more than two decades later than the national unification, owing to the practical difficulties unavoidably occurring when instituting the private legislation. The provinces that had used to be under Austrian-Hungarian domination continued in the meantime to apply their own legislation, while implementation of the Romanian legislation was achieved gradually, aiming to progressively extend the area of applicability.

Law num. 478 of October 1st, 1938, provided for the extension of the Romanian legislation over Bucovina, and five years later, Law num. 389 of June 22nd, 1943, provided for the extension of the Romanian legislation over the Romanian territories beyond the Carpathians, which was meant to cover the tragic reality of the Vienna Dictate.

Installation of the communist regime in Romania managed to change the look of the Romanian private law, by turning it into the socialist law. Within the socialist system, the concept about the law, officially approved by the Party and the State, is that the law's mission is to direct the elaboration and the evolution of the law, therefore the entire legislative activity – the tribunals' and the doctrine's.

The unity of power principle, the role of the State and of the Party, is what explains the structure and the function of the constitutional law institutions and, by that, the very differences which, despite the formal and apparent similarities, make the institutions in the socialist juridical order be so different from the corresponding institutions in the other systems.

Considering that the law is the superstructure of the economic basis, the socialist law transforms according to its conception the data and the prejuridical elements, arranges and radically modifies through the positive law the datum and the basis itself, imposes a radically new and specific economic constitution, modifies authoritatively and deeply the social structure, replacing a pluralist society by the socialist one, closed and limited to the rulers and the ruled.

In this system, the datum is politically formed and oriented precisely by intervention of the positive law, where property and the juridical form of its expression is the foundation of the juridical institutions, while at the same time explaining the entire orientation of the legislative policy.

The socialist philosophy of law, based on the socialist form of ownership as foundation of the social relations, gave an apparent justification to its legislative policy of restricting the right to private property, which it limited to the right to personal ownership of strictly necessary possessions.

The laws providing for the nationalization of industrial, banking, mining, insurance, transportation, etc., enterprises, under which the possessions were taken and given the status of socialist State ownership, free of duties and without a previous and fair compensation, Decree num. 111/1951 on taking into the State's ownership goods without owner, left or abandoned, applied abusively, or Laws nums. 58 and 59/1974 on taking into the State's ownership the land corresponding to alienated buildings belonging to natural persons, as well as Law num. 4/1975 that enshrined the forced taking into the State's ownership of a second house not alienated within 1 year since acquirement, are self-speaking regulations showing the socialist law philosophy in terms of property, despite the constitutional provisions and the provisions in the Civil Code that enshrine and defend this private right.

The Civil Code of 1865, still in effect, was affected by numerous violations and limitations. Thus, the entire subject matter of persons was taken out of the applicability of the Civil Code under Decree num. 31/1954 on natural and legal persons, while the family relations taken away from the Civil Code were conferred in 1954, by means of a technical-legislative operation, the significance of a new branch of law.

The directed, planned, economy in the industrial and the agricultural sectors laid its imprint upon the organization and the functioning of enterprises and the agricultural units, their relationships being regulated by a special legislation, taken out of the applicability of the Civil Code.

The ensemble of special regulations dealing with the economic relationships between enterprises led to the creation of a new branch of law, he "economic law", while the organization and the functioning of enterprises was governed by norms making up another branch of law, that of the enterprises.

Apart from these, the co-operative agricultural law emerged governing the relations between the agricultural co-operative units.

All these new branches that artificially extended the sphere of the system of law and that are difficult to include in either the public law or the private law, because they were characterized by dichotomies, restricted the applicability sphere of the commercial law.

The Commercial Code maintained in effect was no longer applied to the domestic relations of commercial law. It was maintained because of the need to provide a legal regulation dealing with the juridical relations in the field of foreign trade, with which the Romanian economic units were involved.

A general survey of the legislation and its application, points out the characteristic features of the socialist juridical system, whose principles are rooted in the Soviet law.

The entire Soviet juridical legislation and doctrine inspired the juridical legislation and practice, while the specialized works often referred to it.

The civil law institutions, particularly those related to ownership, were attached a new spirit of interpretation in consonance with the principle of the superiority of the socialist form of property, of its prevalent protection,

motivated by the absolute, inalienable and imprescriptible of this form of ownership.

The transition to the market economy after the revolution of 1989 didn't entail the complete structural change of the Romanian juridical system.

However, it led to the rediscovery of the commercial code, which became the general regulation for the commercial activity, based on the principle of private ownership and free initiative; it marked the moment when the Romanian law came back to the Roman-Germanic system; and, at the same time, it marked the beginning of a process by which the law was adapted to the market economy, known as the "law of transition". This return was possible because the so-called socialist system was an artificial creation reproducing the characteristic features of the Roman-German system from which it was derived.

The socialist system was characterized by the centralized management of the economy, typical of the form of ownership – the State-owned, socialist one – as well as the intrusion of public law into the private one, although the important elements were not decisive such as to characterize a great system, as the socialist system claimed to be.

The socialist property and the unique fund of the State property disappeared, being replaced by the private property.

The first steps towards the privatization of the economy were marked by Law num. 15/1991 on the transformation of State enterprises into commercial enterprises with a State-owned capital, followed by the laws dealing with the administration, the management and the selling of the stock by FPS, APAPS, and AVAS. The abolishment of the State agricultural enterprises and co-operatives allowed for the restoration of the right to ownership of the land for the former owners, based on Laws nums. 18/1991,169/1997 and 1/2001, followed by Law num. 247/2005, on amending and supplementing the preceding laws.

The restoration process of the right to private ownership was continued by Law num. 112/1995 and Law num. 10/2001, on the restitution of immovables abusively taken in the period March 6th, 1945 – December 22nd, 1989.

The variety of the situations and the gradual adoption of the legislation devoted to the restitution of these immovables under the two normative acts, uncorrelated with each other, and the fact that Law num.

10/2001 was subject to multiple modifications in certain aspects, generated an abundance of lawsuits, a non-unitary jurisprudence and repeated convictions of the Romanian State by the European Court of Human Rights.

Law num. 213/1998 that preceded the two laws established the framework for the delimitation of public property of national and local interest from the private property.

In an exquisite technique, art. 6 in this law opens the way for the restoration of the right to ownership in relation to the possessions acquired by the State and the administrative-territorial units, corroborating this procedure with the Universal Declaration of Human Rights, the international treaties where Romania was a party and the Constitution, all of which enshrine this right.

The possessions taken by the State without observing this framework, including those acquired by vitiating the consent, may be claimed by the former owners or their successors, based on the common law, unless they are subject to a special law. Law num. 10/2001 as a special law in the field, which instituted a special procedure for the restitution of the possessions taken by the State in the period 1945-1989, restricted the common law way of enjoying the right to ownership, generating litigations and sometimes the dissatisfaction of the former owners, while instead it introduced the stability of the civil circuit disturbed by the legislative sequence.

The legal framework conferred by art. 6 in Law num. 213/1998 reproduces the constitutional principle provided for by art. 11 and art. 20 referring to the Universal Declaration of Human Rights or the human rights treaties where Romania is a party.

Integration of the provisions in the treaties into our domestic law operates either in the classical way, consisting in modifying the domestic legislation such as to come to be in consonance with the provisions in the treaties, or by means of direct action – self executing – meaning that the provisions in the treaties are applied at domestic level without being processed by the domestic legislation, and even taking precedence over the domestic legislation, such as is provided by the Constitution in its art. 20, which refers to the Universal Declaration of Human Rights and the human rights treaties where Romania is a party.

Once Romania acceded to the European Union, the Community juridical order as an integrating element became compulsory and preeminent, taking precedence over the domestic law and being in consonance with the

international juridical order. The derived Community institutional law was also assimilated by the Romanian legislative system and the Romanian courts, which apply it directly whenever the sources of the Community law are not to be found in the domestic legislation or the latter is in contradiction with these sources.

The national jurisdiction applies the jurisprudence of the Court of Justice and that of the Court of First Instance, as the Court is the supreme Community instance that contributes to the fulfillment of the objectives in the treaties, the Community treaties that they incorporate and apply in the spirit of the Community law, being the only acknowledged court competent to interpret the treaties in juridical terms.

The Romanian courts also apply the jurisprudence of the ECHR, which is compulsory for them, in terms of the treaty ratified by Romania in 1994. Both jurisprudences, though not sources of law, play an important role with the interpretation and the application of the legal provisions in the commercial law, the civil law or the adjacent legislation, making the judicial practice uniform, alongside the decisions the High Court of Cassation and Justice pronounce in the appeals to the interest of the law, which are also compulsory.

Security and the stability of the juridical relations enshrined on the basis of irrevocable pronouncements was consolidated by removing the extraordinary appeal for annulment, which could only be ordered by the country's General Prosecutor in relation to these pronouncements.

Adopting reexamination as an extraordinary way to appeal, based on art. 322 paragraph 9 in the Civil Procedure Code, instituted under Government Urgency Ordinance num. 58/2003, gave effectiveness to the decisions by the European Court of Human Rights by which it was found that a violation of the fundamental rights and freedoms owed to a pronouncement, when the serious consequences of the violation continue to be generated and cannot be repaired in any other way (but reexamination).

The historical survey reveals that the Romanian juridical system with Roman-Germanic ramifications incorporates a mixture of coded or noncoded normative acts, most of the coded ones going back to the 19th century, whose application needs an interpretation process imposed not only by the historical and the social-economic elements, but also by the integrating requirements of the Community law and the jurisprudence of the Court of Justice or the European Court of Human Rights.

These requirements, together with the interpreter's individual and professional abilities, in the context of a legislation that in certain fields is dense, uncorrelated an instable, often generates a non-unitary practice, criticized by the European institutions.

However, as at legislative level we witness a trend towards the unification of the legislation, to its harmonization with the sources of the Community law, with the international treaties where Romania is a party, with the jurisprudence of the European Community Court of Justice and the European Court of Human Rights, without the national element being neglected in the process by which the legislation is modernized, the abnormalities related to the non-uniformity of the judicial practice of social resonance tend to diminish and even disappear.

The adopted Civil and the Criminal Codes, as well as the Civil and the Criminal Procedure Codes, play an important role in the process by which the legislation is modernized in Romania, in consonance with the trend towards the universalization of the law.

This is a coherent and articulated response to the need to reform the fundamental institutions and mechanisms, which are related to the substance of the social-economic relations and of the procedural instruments. The imperative to adopt a new Civil Code was entailed by the need to unify the norms governing the private law relations, under such circumstances that certain subject matters are regulated by separate norms, which underwent numerous amendments, mainly operated during the communist period.

The adopted Civil Code, due to come into force in 2011, is the answer to one of the most important challenges that the legislator, the jurisprudence and the doctrine had to face, namely, to rebuild the system of the right to ownership, to remove the right to socialist property, and to restore the tradition of the right to private ownership, consecrated gradually by the post-December legislation.

The corollary of this evolution of the Romanian juridical system was the constitutional consecration and guarantee of the right to private ownership and to public ownership. This is the foundation on which new regulations were adopted completing the juridical regime of the two forms of the right to ownership.

However, they form a corpus of non-unitary norms that had to be integrated, as natural, into the Civil Code.

The Civil Code promotes a monistic concept with the regulation of the private law relations, where one single normative act is to incorporate the entirety of the regulations referring to the person, to family relations and to commercial relations. In addition, the codification work also took into account the provision of the international private law.

The present Civil Code has revised the institution of guardianship and that of trusteeship, for the purpose of ensuring a real protection of the juvenile, and includes specific provisions referring to the protection of the right to life, health and integrity, the right to private life and the person's self-determination, as well as the respect of memory of the deceased.

Other revised regulations were those referring to the marital status and to the legal person; also, the Civil Code was introduced express provisions referring to the functioning of the legal person, the special regime of the latter's nullity, while taking into account the provisions of comparative law, the Community law and the special domestic legislation devoted to trading companies, associations and foundations.

With our juridical system, the doctrine has always played a special role in the attempt to interpret the normative acts and to achieve an as unitary practice as possible, while at the same time operating as a feedback element in the effort to improve the legislative framework.

BIBLIOGRAPHIC REFERENCES

Codul Calimachi – editie critica, Bucuresti, Editura Academiei, 1958.

ANCEL, M., *Utilité et methods du droit compare*, Neuchatel, Edition Ides et calendes, 1971.

BELU MAGDO, M. L. and ZLATESCU, I. M., "Un cod civil al drepturilor omului", *in "Drepturile Omului"*, issue num. 1/2010.

BRADEANU, S. and ZLATESCU, V. D., *Tratat de drept civil*, Partea generala, vol. I, Bucureşti, Editura Academiei, 1967.

BRADEANU, S., *Extinderea legislatiei civile si comerciale a vechiului Regat in Romania de peste Carpati,* Sibiu, Editura Dacia Traiana, , 1944.

CONSTANTINESCO, L. J., *Traité de droit comparé,* Paris, L. D. G. J., t. II, 1972.

DAVID, R., *Traité élémentaire de droit civil compare,* Paris, L. G. D. J., 1950.

IONASCU, A., *Tratat de drept civil,* Partea generala, vol. I, Bucuresti, Editura Academiei, 1967.

ZLATESCU, V. D. and ZLATESCU, I. M., "Le droit roumain dans le système juridique romano-germanique", *Revue internationale de droit comparé*, num. 2, 1992.

ZLATESCU, V. D., *Drept privat comparat,* Editura Oscar Print, Bucuresti, 1997.
———, G*eografia juridica contemporana*, Bucuresti, Editura stiintifica si enciclopedica, Bucuresti, 1981.
———, P*anorama marilor sisteme contemporane de drept,* Bucuresti, Editura Continent XXI, Bucuresti, 1994.
———, *Tratat elementar de drept civil roman, Teoria generala*, vol. I, Calistrat Hogas, Casa editoriala Calistrat Hogas, 2000.
ZONDERLAND, P., "Courrents contemporaines dans le droit privé Nérlandais", *Revue de droit international et de droit comparé*, nums. 2-3, 1977 et seq.