

JUDICIAL TRUTH VERSUS OBJECTIVE TRUTH. METHODS OF SIMPLIFYING THE RELATIONSHIP BETWEEN THE TWO TYPES OF TRUTH IN CRIMINAL CASES

I. THESIS SUMMARY

The present habilitation thesis provides a summarised presentation of my main scientific and professional achievements, together with the growth projections of my academic career.

The first section commences with a presentation of my scientific and professional activities, starting with my graduate studies, followed by professional training and details on the exercise of my profession, completed with a presentation of my educational activities performed up to now. The scientific research activity materialised in the preparation, individually or as joint authorship, of a criminal procedure treaty, of five university classes, two student guides for distance learning, a portfolio intended for the activities performed during the seminars, one guideline for criminal prosecution, two monographies and 16 articles in high-ranking scientific magazines in the field of legal sciences.

Below is an outline of the scientific recognition bestowed upon me as a result of my constant publishing in the specialised magazines which are very well-thought-of in this field. This recognition materialised in my co-optation as a member of the international scientific committee of the “CKS - Challenges of the Knowledge Society” International Conference, on the editorial board of two magazines specialised in the legal field, in the body of senior trainers for initial professional training of the Romanian Institute for Lawyers’ Training (INPPA), together with a letter in which the Chairperson of the High Court of Cassation and Justice acknowledged my scientific involvement in the strengthening of a unitary jurisprudence in the matter of criminal law and criminal procedure.

The habilitation thesis also includes details on my ability to lead research teams, together with the ability to provide scientific guidance and coordination.

Throughout my educational career, and also in my pleading in front of the courts, my utmost concern was to underline the importance of the judicial truth (the truth based on the contents of the case) when reaching a solution in any criminal case. My version for the settlement of the dilemma originated from the objective truth – judicial truth relationship represented a constant concern transposed in the scientific research activity and takes, under such circumstances, an important place in the first section of the present habilitation thesis. In the criminal cases where the criminal decision depends on the settlement of a prior issue, we will find ourselves in the desirable scenario of an almost perfect overlapping of objective truth and judicial truth. This is the reasoning why the first section of the thesis also includes the presentation of my view on the preceding issues, as exposed in scientific papers prepared until the present moment. The study commences with the review of the concept of preceding issue, with an emphasis on the distinction between the preceding issue, on the one hand, and the preliminary and pre-judicial issues, on the other hand. Within the said review, I have argued that the clearest differentiation between the issues to be settled prior to the settlement of the criminal action is the differentiation between preliminary issues and prior issues. In this respect, the distinction is substantial: whilst the first category aims at matters of procedure, without any influence on the merits, the second is particularised specifically by the circumstance that the settlement of the criminal law conflict subject to trial also depends on the manner of its settlement.

Hereafter, I have outlined the particularity of pre-judicial issues by the fact that, although they regard the merits of the criminal case, they will not be settled by the court which hears the case, but by another court with exclusive competence in this regard. As it can be seen, there is a similarity by comparison with the prior issue (the connection between the issue and the merits of the case), and also a difference (with regard to the judicial entity to settle the issue). At the same time, I have argued that this difference is not substantial but only procedural, considering that, in reality, the pre-judicial issue is only a variety of the preceding issues.

Another portion of the study is dedicated to the personal contribution to the establishment of the limits of issues which can or must be included in the debate of participants under the guidance of a judge or of a court. The review of issues which can be considered as preceding issues is a complex review, as the topic combines issues of procedural law with elements of substantive criminal law.

The analysis continues with the study for the procedure to settle preceding issues, and in this regard I have outlined both the positive issues and the existing shortages of the regulatory side of this institution.

I have pointed out that the directives of the Code of Criminal Procedure establishes two methods to settle the preceding issues. Although the relevant provisions are given under art. 52 of the Code of Criminal Procedure, thus conveying the impression that this legal text is the only text intended for the matter under discussion, I have pointed out that, in reality, the directives of art. 475 and the following of the Code of Criminal Procedure on the prior decisions for the settlement of legal issues are also able to establish a procedural method for the early disposal of issues upon which the settlement of the merits of a criminal case depends.

In the same section I have also reviewed the previous regulation of the exception enshrined by the directives of article 52, section (3) of the Code of Criminal Procedure, meaning that the criminal court could have ignored the *res judicata* of the final decision of the civil court if it referred to “circumstances that regard the existence of the crime”. In my opinion, such rule was an extremely controversial issue (for that matter, the respective rule is now declared unconstitutional). The argument prepared to this end is based both on theoretical concepts and on issues of jurisprudence, outlining numerous decisions of national courts, as well as of the European Court of Human Rights.

At the same time, I have also included in my review the settlement of the preceding issues according to the procedure regulated under article 475 and the following of the Code of Criminal Procedure. I considered it paramount to highlight that depending on the manner in which the High Court of Cassation and Justice awards a decision on the notification on the prior decision, a hypothesis can be generated where the course of trial is affected by a preliminary issue as a result of a preceding issue.

Hereafter, the review considered the distinction between the phases of the criminal trial, from the point of view of the matters heard prior to the settlement itself of the case. To that end, I considered it appropriate to ask the following question: *can there be a debate upon preceding issues also in front of the judge of rights and freedoms, in the phase of criminal prosecution, and in front of the judge of pre-trial chamber in the phase of pre-trial chamber?* Thus, in the end of the prepared study, I have brought to attention the possibility to discuss the matter of preceding issues both in front of the judge of rights and freedoms, in the phase of criminal

prosecution, and in front of the judge of pre-trial chamber in the phase of pre-trial chamber.

The second section of the habilitation thesis is covered by the evolution and development plan for the professional career, pointing out both general and specific goals with regard to research, educational and professional evolution, with particular emphasis on the field of criminal procedure law.

The last portion of the present thesis is dedicated to bibliography, which includes the treaties, classes, monographies, articles and studies, arranged in alphabetical order, together with the legislation and judicial practice studied for the preparation both of scientific papers and of the habilitation thesis.