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PhD Thesis - SUMMARY

THE INVALIDITY OF THE JURIDICAL CIVIL ACT IN THE ROMANIAN LAW IN THE CONTEXT OF THE UNIFORMIZATION OF THE LAW IN THE EUROPEAN UNION

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1. The theme of the research and its importance

The Nullity of the civil juridic act constitutes one of the fundamental institutions of the general part of the civil law, the penalty for missing legal act contrary effects rules which establish the validity requirements such as capacity, consent, object, cause and form. The application of this penalty leads to ensure efficient legal provisions governing the conditions of validity of the juridical act in the absence of such sanctions aim of establishing such requirements for care, on the one hand, private interests of the subjects of civil law, and, on the other hand, the general interest of society and the preservation of what is to impose the rule of law and a legal circuit consistent and compatible with the social norms of the contemporary period.

The Nullity of the civil juridic act is a very complex law institution, requiring clarification and substantiation several aspects desire in his research includes a thorough and suitable for both internal social realities and the new emerging regulatory rules at the level of the European Union.

In this respect it should be noted that this penalty should not be viewed in isolation, it coexists with the legal reality as multiple other mechanisms, such delimitation to other civil law sanctions that yields inefficiency civil legal acts (such as, for example, termination, cancellation, revocation, unenforceability), but with the emergence of concepts derived from European law to be treated the concept of absolute nullity, of which emphasize the practical importance and novelty of the concept of unwritten clauses, and notion of "the abusive clauses".

The importance of the topic under analysis should be reported and the emergence of new legislation in civil consisting of adopting a new Civil Code that is intended to be aligned and interpreted according to its application aspirations of Member States of the European Union.

2. The aim and the objectives of the research

This paper aims to analyze the institution invalid civil legal act regulating offered by the new Civil Code, which establishes a series of conceptual changes and updates on this topic.

Thus, given the recent entry into force of the new legislation fundamental to general civil law, nullity as a sanction universal, applying to all civil legal acts, I have found it necessary to analyze such changes both from a historical perspective by highlighting introduced new aspects of civil law system and by application of practical issues that have emerged from those rules during a period of almost five years after the entry into force of the new Civil Code.

Also among the targets for paper particularly projecting an analysis by comparing primarily comparative law Spanish law, this is a new legal doctrine existing up to this moment considering the multitude of bibliographic sources used and their thorough analysis due to a high knowledge of the Spanish language by the PhD student, but at the same time and in relation to French civil law. Studying mainly the laws of these two Member States of the European Union has become especially so given the takeover of Spanish law and French law has many provisions and their implementation in the new Civil Code, comparative analysis leading to the identification of commonalities, and to providing solutions interpretation and application of new national legislation by reference to case law and doctrine already established in Spain and France in the interpretation of the same legal provisions.

Furthermore, the paper highlights the similarities between these laws, which leads to substantiate the concept of uniformity of law at European level is raised and the solutions envisaged in the projects developed so far to ensure consistency within the EU legislative.

3. The methodology of the research

With reference to the purpose and objectives, it was necessary to use several research methods, among which the mostly logical method, comparative method and historical-teleological analysis method.

The logical method has been used in interpreting legal provisions and implementation corroborate the theoretical and practical aspects, in particular by recourse to concepts of civil procedural law to highlight the importance and practical impact of proposed interpretations, while the comparative method revealed the results of research in terms of identifying the degree of uniformity of the laws of two of the most representative of the European Union Member States on invalidity civil act, that method of interpretation leading to practical and consistent propuneea of the new Romanian Civil Code in this matter .

Teleological historical analysis method has been used most often to highlight order changes made in this matter by reference to the Civil Code in 1864 to identify purpose of application of legal provisions have been changed sometimes conceptual.

4. The structure of the paper

The structure of the work, one can notice its statement clear division conducted five titles subdivided into chapters, subchapters strictly observe nature as to show a coherent research plan, likely to effectively highlight the objectives and results of scientific research.

In this regard, the work begins with the concept of invalidity exposure in this introductory chapter being exposed concise and eloquent theme, the importance and the justification for its approach and the objectives and research methodology. The paper continues with the presentation of scientific discourse, the content itself is the

structural basis of the analysis of the five titles, subdivided into chapters and, where appropriate, into subchapters, structure likely to show fluency, logic and coherence of scientific discourse, and to ensure its easy browsing by recipients of this work, namely legal practitioners.

Title I, entitled ,, General terms of civil legal nullity 'concept comprises 5 chapters devoted to the presentation of the concept of invalidity, highlighting the essentially legislative changes made to this concept by the entry into force of the new Civil Code, the reference to maintaining the functions that sanctions civil law, which delimit the ineffectiveness of other civil penalties.

Thus, Chapter I is dedicated to presenting the general aspects of the concept of nullity of the juridical act both in relation to changes brought by the new Romanian Civil Code, and the law exposure incidents in the Spanish Civil Code and the French Civil Code. This purpose is achieved by exposing a comparative analysis of numerous similarities between the three law capable of conferring a unitary character of this institution at European level, but also highlight those differences that ensures the uniqueness of national specifics of each national legal system.

Chapter II contains invalid exposure functions by highlighting the scope of this imposition of civil penalties both in Romanian legislation and in the Spanish and French.

In the third chapter is an analysis of the concept of nullity of the juridical act in particular by the historical evolution in the Romanian Civil Code of 1864 and the 2009 Romanian Civil Code, the analysis will be developed in the next chapter devoted to comparative exposure which attracts sanctions ineffective civil act.

It notes that occasion the fundamental differences between nullity, on the one hand, and other civil sanctions such as termination, cancellation, revocation, unenforceability and reducţiunea lapse in perspective both theoretical and practical. The awards are presented, and the similarities between the sanctions in their recovery

during the judicial process by triggering civil. In this sense, practical elements are analyzed in material use civil law concepts such as the formulation of requests for summons seeking a declaration submitted sanctions intervention, specific materials they require mostly jurisdiction Settlement of such claims, their prescriptive procedural establish the optimal elements of evidence required to be administered, as well as how to solve by analyzing its effects to the content.

The fifth chapter is dedicated to documenting the classifications made by different scholars, a new concept assimilated by the majority doctrine of absolute nullity as partial, ie unwritten clauses. They exposed the main applications of the new Civil Code, explaining the importance and purpose of each of them in relation to their importance, the analysis continued with the presentation of the operation of the effects of such clauses. It also presented the characteristics of such clauses as a result of their asimiliarii null and void clauses by reference to other points of view exposed in recent specialized doctrine.

Title II entitled "The causes of nullity" consists of three chapters, the first covering general issues concerning their identification both in Romanian civil law and civil law in the Spanish and French.

Subsequent chapters conduct a thorough analysis of absolute and relative grounds for invalidity by a comparative analysis of the causes of nullity of the juridical act in Spanish law and French law. Thus, we analyzed various violations of the conditions of validity by reference to the requirements of validity of each of these, with particular reference to the ability of the parties consent, object, cause and form civil legal act.

Title III called ,, The legal regime of invalidity 'is structured in four chapters, the first being dedicated to presenting the Preliminary consisting of defining the legal regime of nullity of civil legal act in the three legislations analyzed.

Chapter II contains the presentation rules that form the legal regime of relative nullity by analyzing the specifics of the new Romanian Civil Code , the Spanish Civil Code and the French Civil Code . On this occasion , are developed practical on invoking judicially relative invalidity , persons who have standing in such circumstances , and the solutions that can be delivered and their effects in relation to both parties in the trial , and the possibility to cover invalidity by confirmation aspect analyzed from the perspective of comparative law .

Chapter III is similarly dedicated to the same issues in terms of exposure nullity of the juridical act, while the last chapter is devoted to highlighting the differences between the legal status of the two types of nullity in order to identify practical importance of their classification.

Title IV is entitled " Consequences of invalidity 'and is divided into five chapters, in turn consist of chapters.

Chapter I includes exposure effects invalidity and rules of law, principles governing these effects in terms of comparative law. In this regard, there is a strong similarity between the three legislations, producing legal nullity principle effect retroactively, imposing restore the previous situation and define the validity of legal documents as a result of the abolition subsequent legal act initially present legal issues and analyzed both Romanian civil law and civil law Spanish and French.

Chapter II is devoted to the analysis of the effects of retroactivity principle of civil legal act, and presentation exceptions to this principle through a comparative analysis of legal provisions in the three legislations, while Chapter III contains the analysis of the rule of restitution siminar previous situation and its exceptions. It notes analysis prescriptive or action imprescriptible covering throw parties in relation to the previous situation existing doctrine and jurisprudence to date.

In Chapter IV is performed presenting the principle iure resoluto Dantis , resolvitur ius accipientis exemplifying specific exceptions of Spanish law and French law .

The fifth chapter is dedicated to analysis of the causes which removes the effects of invalidity, namely the conversion of civil act, common error and invincible and the principle of tort liability, most notably the presentation and analysis and other causes nullity or absence removes them from the system as Spanish or French.

Title V entitled " procedural issues regarding the invalidity action " is dedicated to the interdisciplinary analysis consisting of exposure practical aspects of civil law in matters of nullity of the juridical act of civil procedural law perspective.

In this regard, various types of actions are analyzed invalidity, especially being analyzed action requesting nullity of a legal act heritage, but also of finding fairness of terms stipulated in contracts between professionals and consumers. The analysis refers specifically to courts jurisdiction issues for settling claims covering civil legal nullity by reference including issues arising from the entry into force of the New Code of Civil Procedure in February 2013 to establish the standing of Parties in the various legal proceedings and other matters such as how establishing judicial stamp tax or prescriptive manner invocation of such a request.

The last part of the paper is devoted to the conclusions reached in the course of doctoral student research thorough process resulted in the development of the study mentioned above. The institution highlights the major changes brought civil act invalid following the entry into force of the new Civil Code and the new Code of Civil Procedure and proposals for improvement of the existing regulation by offering the following aspects of law ferenda and comparative analysis of how similar provisions have been applied in civil law systems Spanish and French , but also in relation to projects to standardize the existing civil law in the European Union.

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