THE CURRENT TRENDS OF CONSTITUTIONALISATION OF THE NEW CIVIL CODE AND OF THE NEW CIVIL PROCEDURE CODE - SELECTIVE ASPECTS

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Abstract

By this approach, the proposed study opens a complex and complete vision, but not exhaustive on: The current trends of constitutionalisation of the new Civil Code and of the new Civil Procedure Code. The subject of the scientific endeavor will be circumscribed to the scientific analysis of its parts, as follows: 1) Preamble. 2) The first judicial review of the constitutionality of the law established in the United States and in Romania – their consequences. 3) Reflection of the constitutional principles in the new Civil Code and the new Code of Civil Procedure. 4) Reflection of the dispositions of new Civil Code and of the new Code of Civil Procedure in the Constitutional Court decisions. 5) Compliance with Romanian Constitution of new Civil Code and of new Code of Civil Procedure - the current trends of constitutionalisation of the law. 6) Conclusions.

Keywords: *judicial review of the constitutionality of the law, constitutional review, new Civil Code, new Civil Procedure Code, constitutional provisions in civil mater, constitutional provisions in civil procedure, current trends of constitutionalization.*

1. Introduction

The subject of the scientific endeavor will be circumscribed to the scientific analysis of the four major parts of it: 1) The first judicial review of the constitutionality of the law established in the United States and in Romania - their consequences. 2) Reflection of constitutional principles in the new Civil Code and the new Code of Civil Procedure. 3) Reflection of the dispositions of new Civil Code and of the new Code of Civil Procedure in the Constitutional Court decisions. 4) Compliance with Romanian Constitution of new Civil Code and of new Code of Civil Procedure - the current trends of constitutionalisation of the law.

In our opinion, the area studied is important for the constitutional doctrine, for the doctrine of civil law and civil procedure law, the general theory of law, for the legislative work of drafting laws as well as for the legislative technique, because through this scientific approach, we aim to establish through a diachronic and selective approach a complex and complete reflection, albeit not exhaustive of the current sphere, under the form of the entire selective aspects, regarding the topic under discussion.

In order to fully but not exhaustively cover the field of study, after the prerequisite explanations, the selective examination of the first judicial review of the constitutionality of the law first done in the United States and in Romania will follow, having as a consequence the establishing of the jurisprudential base of this review in the two countries. I have also selectively analyzed the diachronic evolution of this review in the United States of America and Romania.

This topic regarding "the current trends of constitutionalisation of the new Civil Code and of the new Civil Procedure Code" was performed according to a logical scheme of the analysis of the "compliance with the Romanian Constitution of the new Civil Code and the new Civil Procedure Code" thereby highlighting the contribution of the Romanian Constitutional Court to constitutionalise the law.

From the perspective of full but not exhaustive coverage of the area regarding "Current trends of constitutionalising the New Civil Code and the New Code of Civil Procedure", a flowchart was introduced on the evolution and consequences of this review regarding the conversion of the law under the influence of fundamental law.

Through this approach, we aim to pinpoint the theoretical, constitutional and legal sources of law regarding the direct consequences of constitutionalising of the Romanian law on the simplification of the Romanian legal system.

Even if the constitutionalisation of the law turns back in time to the first written constitution in the world, the theoretical interest to take it up again is determined by the fact that the existing literature has not always paid enough attention to some theoretical aspects of the constitutionalisation of the law.

Furthermore, it is our opinion that the literature does not retrospectively approach the review of the constitutionality of laws and its direct consequences.

In addition, the study focuses on the valorization of the constitutional and legal regulations in diachronic and selective approach regarding the review of the constitutionality of laws including under the legal regime of the New Civil Code and the New Code of Civil Procedure.

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2. The first judicial review of the constitutionality of the law established in the United States and in Romania – their consequences

2.1. The first judicial review of the constitutionality of the law established in the United States and in Romania – its consequences

The compliance with the Constitution, established in the title of the study, involves reviewing the constitutionality of laws which appeared shortly after the adoption of the first written constitution. The first written Constitution in the world is the United States Constitution adopted in 1787.[1] That is the reason why elected within the present study the first judicial review of the constitutionality of the law, approached from a historical perspective, established in the United States, in the famous Marbury versus Madison[2] decision in 1803, although the Constitution did not give the right to the Supreme Court of the United States to rule on the constitutionality of the law.

The cause is itself curious. In 1800 and very shortly after the presidential elections, the administration of President John Adams proceeded to appoint 42 judges, including William Marbury, who were only justices of the peace in the District of Columbia. Taking into account the *spoils system* (rewarding positions to loyal supporters of the winning candidates) in force in the US, one could obviously draw the conclusion that the interested ones owed their nomination to their federalist sympathies. Unfortunately for them and though the appointments were determined according to the legal rules in force, they had not yet been notified, when, following the presidential elections, President John Adams was replaced by Thomas Jefferson. The new administration and especially James Madison, the Secretary of State, who was authorized to monitor these appointments, was not willing to compromise at all and issued only 25 appointments, among which William Marbury was not present.[3]

He pleaded his case in front of the Supreme Court so that it would coerce the administration into issuing his appointment, though he was not at all interested, because the duration for which he was appointed had almost expired. The Supreme Court presided by the famous John Marshall was in a bit of a mess. President Marshall will preside with great strategic ability for the Court, asserting his authority without causing discomfort to President Jefferson's political adversaries.[4]

For this he will present a surprising argument which made him paradoxically touch on the matter, while declining the competence of Court. To simplify matters, it can be said that this argument can be summed up as follows: Thus the real problem consists in determining who can compel the administration to proceed with the issuance of this appointment. It is clear that a 1789 Federal law regarding the legal organization seems to ascribe this competence to the Court to give the administration the execution order firstly through a *writ de mandamus*, but this 1789 law is contrary to the Constitution, for it does not ascribe to the Court but a mere appeals competence, with the exception of a few competence cases listed firstly, among which there is obviously not the one who is subjected to it (according to art. 2 section 2 in the Constitution).[5]

In exchange for its own satisfaction, the Court asserted its right to review the government's administrative acts and the right to review the constitutionality of laws, though there was no susceptible text to fundament its competence in the field.[6]

Regarding the interpretation of the United States Constitution and federal jurisdictions, we specify the following: "Having to judge disputes which presuppose a conformity assessment with the Constitution, the federal jurisdictions must interpret this constitution, which is all the more necessary as the federal Constitution is a relatively short and very old text. Finally, we have to remember a statement of one of the *United States Supreme Court Presidents*. *Still, one has to insist that everything occurs as if the judges could add something to text by interpreting it.* As the *Chief of Justice* declared "The Constitution is what the judges say it is".[7]

2.1.1. Conclusions regarding the diachronic evolution of the constitutional review in the United States of America

The legal reasoning allowed the foundation of the constitutional review in the United States of America, making its unanimous acceptance possible and its current exercise, even by those people who would have initially denied the judges' competence to check the constitutional regularity of laws.

2.2. The first judicial review of the constitutionality of the law established in Romania and its consequences

We should specify that the doctrine of comparative law was analyzed as a Romanian precedent - the constitutionality of laws in Romania in the early twentieth century until 1938. In short, within the study, it is stated that since 1902 in Romania, and then much more successfully in 1912, the Court of

[1] Elena Simina Tănăsescu and Nicolae Pavel, The Constitution of the United States of America: (Bucharest: ALL BECK, 2002) 53-71.
[2] Alfred H. Kelly, Winfred A. Harbison, The American Constitution *Its Origins and Development*. (New York, W. W. Norton & Company Inc, 1963), 226-322.
[3] Elena Simina Tănăsescu and Nicolae Pavel, op. cit. 25.
[4] *Ibidem*. op. cit. 25.
[5] *Ibidem*, op. cit. 26.
[6] *Ibidem*, op. cit. 27.
[7] *Ibidem*, op. cit. 29-30.

Cassation, in the absence of any express empowerment, recognized the Romanian judge's right to refuse to enforce a law that it would have considered unconstitutional, at the request of one of the parties during the trial. And besides, it was taking such a bold decision for the era and, dare we say it, even innovative in Europe.[8]

In 1911-1912, the Ilfov Court and then the High Court of Cassation and Justice arrogated the right to check the constitutional regularity of laws in the famous tram business from Bucharest. Through a special law adopted in 1909, the Bucharest municipality was allowed to create a Tram Society equipped with statutes drafted by the municipality and approved by the Council of Ministers. In December 1911 an allegedly interpretative law was adopted that brought important changes to already adopted statutes, practically leading to the drafting of completely new ones.[9]

Since the amending law was intentionally declared interpretative, it was logical to think that its effects would have to occur at the time of the interpreted law, that is since the adoption of the statutes of the Bucharest Tram Society in 1909. Faced with severe problems, the Tram Company did not hesitate to ask the Ilfov Court to deem unconstitutional the allegedly interpretative law.[10]

The Court's decision was also subsequently confirmed through a decision of the High Court of Cassation and Justice. Thus, to sum up, the courts stated that, since a constitution distinguished between ordinary and constitutional laws, it places the latter ones above the former one in the norm hierarchy.[11]

Since the constitution establishes that the courts are independent, it recognized their power and duty not to enforce laws which may be contrary to a constitutional provision. A judge's main task is to resolve the conflict of laws, so he always has to make sure the most legally binding prevails to the prejudice of the lesser legally binding, moreover when the lesser legally binding law breaks the one which is superior. Since the Constitution is not just a list of vague principles, but a true legal norm which is directly enforced, the judge did not exceed his usual authority when he settled a conflict between two law, one of which was constitutional and the other one lesser legally binding.[12]

2.2.1. The diachronic evolution of the constitutional review of laws in Romania – selective aspects

During 1923-1947 the constitutional review of laws in Romania was achieved only by the Court of cassation in united sections, pursuant to the provisions of art.103 of the 1923 Constitution,[13] which established: "Only the Court of cassation in united sections has the right to judge the constitutionality of laws and to declare inapplicable the ones who are contrary to the Constitution. The judgment of the unconstitutionality of laws is limited only to a specific case. The Court of cassation will pronounce itself as it did on the past on attribution conflicts. The right to an appeal in cassation is constitutional".

The 1938 Constitution kept the same system regarding constitutional review, established by art. 75, paragraph. (1) in the Constitution.

During 1948-1989, the constitutional review of laws was conducted by the *Constitutional Commission* of the Great National Assembly, pursuant to art. 53 of the Constitution of the Romanian Socialist Republic from August 21, 1965,[14] with additional reprints, which established: "While exercising the review of law constitutionality, the Great National Assembly elects a constitutional commission during this legislature".

After the revolution in December 1989, the Romanian Constitution from December 8, 1991,[15] with additional reprints, within Title V, entitled *The Constitutional Court*, regulated the constitutional review in Romania.

3. Reflection of constitutional principles in the new Civil Code and the new Code of Civil Procedure

3.1. Theoretical aspects regarding the ratio between constitutional principles and the New Code principles

I have set to do this study because I have noticed that the afore-mentioned thoughts are not biunique, the legislator selectively choosing the constitutional principles in the field.

Regarding the *principles of law* concept from the doctrine regarding *the general theory of law*, I have selected the following opinion for the present study: "The principles of law are those general ideas, guiding postulates or governing precepts which orient the

[8] Gérard Conac, A Romanian Anteriority: the Control of Law Constitutionality in Romania from the beginning of the the twentieth century till 1938): Public Law Review, nr. 1/2001, 1.

[9] Ioan Muraru and Elena Simina Tănăsescu, (Constitutional Law and Political Institutions) Edition 14, Volume I. (Bucharest: C H Beck, 2011): 74.

[10] Ioan Muraru and Elena Simina Tănăsescu, op. cit., 74.

[11] *Ibidem*, op. cit. 74.

[12] *Ibidem*, op. cit. 74-75.

[13] The Romanian Constitution from 1923 was published in the Official Gazette, Part I, no. 282 from 20.03.1923

[14] The Constitution of the Socialist Republic of Romania from August 21, 1965, was published in the Official Gazette, no. 1, from August 21, 1965.

[15] The text of the Romanian constitution was published in Romania's Official Gazette, Part I, no. 233 from November 21, 1991.

drafting and the implementation of legal norms in a branch of law or to the level of the entire law system. They have the force and meaning of superior, general norms which can be expressed in the texts of normative acts, usually in Constitutions, or if they are not clearly expressed, they are deduced in the light of acceptable supported social values."[16]

From the constitutional doctrine, regarding the constitutional principles, we remember the following opinion for this present study: "The first title, named *General Principles*, includes norms related to the unitary structure of the state, its republican government form. In chapter I, named *Common Dispositions*, the constitutional principles enforceable to the field of rights and liberties are established".[17]

Still considering the constitutional doctrine, regarding the constitutional principles, we retain the following opinion for this present study: "*The principle rights* are those rights and liberties which represent true principles to exercise all the other rights and liberties, including here the universality of rights, equality, non-retroactivity of the law, free access to the legal system, etc.[18]

Regarding *the general principles of civil law*, we retain the following opinion for the present study: "The legal principle can be established by a text in relatively general terms to inspire several applications, asserting as a superior authority, such as the general principles from Title I of the Romanian Constitution, which establishes the principle of sovereignty, nationality, equality as well as the fundamental rights and obligations of citizens, which are even required of the Parliament in its lawmaking activity".[19]

Regarding *the fundamental principles of the civil trial*, we retain the following opinion for the present study: "The fundamental principles represent essential rules which determine the structure of the trial and govern its entire judicial activity". Some of these principles are related to the organization of courts and the status of magistrates, but with implications for the civil trial too, others refer to the judgment activity".[20]

3.2. Reflection of constitutional principles in the new Civil Code

From the systematic analysis of the normative content of the new Civil Code[21] it turns out that the constitutional provisions on the subject are reflected in the following articles: **Art. 4**: *The Primary Enforcement of international human rights treaties*. (1) In matters regulated by the present code, the provisions on rights and liberties shall be interpreted and enforced in accordance with the Constitution, the Universal Declaration of Human Rights, pacts and other treaties to which Romania is a party. (2) If there are inconsistencies between the pacts and treaties on fundamental human rights, to which Romania is a party, and the present Code, international regulations have priority, except when the present code contains more favorable provisions. **Art.5**: *The Primary Enforcement of the European Union Law*: In matters regulated by the present code, the norms of EU law primarily apply, regardless of the quality or status of the parties; **Art. 27:** *Foreign citizens and stateless ones*: (1) Foreign citizens and stateless ones are assimilated according to the law, with Romanian citizens regarding their civil rights and liberties. (2) The assimilation is also enforced for foreign legal persons. **Art. 30**: *Equality before the civil law:* Race, color, nationality, ethnic origin, language, religion, age, sex or sexual orientation, opinion, personal convictions, political and union adherence, to a social or disadvantaged category, wealth, social origin, cultural level, as well as other similar situations do not have any influence on the civic capacity.

3.3. Reflection of constitutional principles in the new Code of Civil Procedure

From the systematic analysis of the normative content of the new Code of Civil Procedure,[22] it results that the constitutional provisions on the subject, are explicitly or implicitly reflected in the following articles: **Art. 3**: *The primary enforcement of international treaties regarding human rights:* (1) In matters regulated by the present code, the provisions on rights and liberties shall be interpreted and enforced in accordance with the Constitution, the Universal Declaration of Human Rights, pacts and other treaties to which Romania is a party. (2) If there are inconsistencies between the pacts and treaties on fundamental human rights, to which Romania is a party, and the present Code, international regulations have priority, except when the present code contains more favorable provisions. **Art. 4**: *The Primary Enforcement of the European Union Law*: In matters regulated by the present code, the norms of EU law primarily apply, regardless of the quality or status of the parties; **Art. 6**: The right to a fair trial, within a reasonable and predictable time: (1) Everyone has the right to a fair trial, within a reasonable and predictable time by an independent and impartial court, established by law. To this end, the court is to use all measures allowed by law and to ensure a quick trial. (2) The provisions of paragraph (1) are enforced accordingly even in the case of forced execution. **Art.**

[16] Ion Craiovan, (General Theory of Law Treaty) (Bucharest, Juridical Universe, 2007) 347.
[17] Ioan Muraru şi Elena Simina Tănăsescu, op. cit. 105.
[18] Ştefan Deaconu, *Constitutional Law*, (Bucharest, CH Beck, 2007) 207.
[19] Marilena Uliescu – coordinator - *The New Civil Code – Studies and Commentaries*) Volume I, Book I and Book II (articles. 1-534), (Bucharest, Juridical Universe, 2012) 60.
[20] Mihaela Tăbârcă, *Civil Procedural* Law: Volume. I (Bucharest, Juridical Universe, 2005) 35.
[21] The new updated Civil Code 2014 – Law 287/2009.
[22] Gabriel Boroi, coordinator and team, *The New Civil Procedure Code*, Article commentary, Tom I, Articles. 1-526: (Bucharest, Hamangiu 2013), 1-29.

8: *Equality*: In the civil trial, the parties are guaranteed the exercise of their procedural rights equally and without discrimination. **Art. 12**: *Bona fide:* (1) The procedural rights must be exerted in good faith, according to the aim for which they have been recognized by the law and without breaking the procedural rights of the other party. **Art. 13**: *The right to a defense*: (1) The right to a defense is guaranteed. **Art. 18**: *The language of the trial:* (1) The civil trial shall be in Romanian. (2) Romanian citizens who belong to a national minority have the right to express in their native language in front of courts, according to the provisions of the law. (3) Romanian and stateless citizens who do not understand or who do not speak Romanian have the right to know all the documents and materials, to speak in court and draw conclusions, through an authorized translator, if the law provides otherwise. (4) The requests and procedural documents shall be drafted only in Romanian.

4. Reflection of the provisions of the New Civil Code and the New Code of Civil Procedure in the Constitutional Court decisions.

4.1. Reflection of the provisions of the New Civil Code in the Constitutional Court decisions.

4.1.1. *DECISION no. 96 from February 28, 2013 referring to the unconstitutional exception of provisions of article 383 paragraph. (2) from the Civil Code*[23]

When motivating the unconstitutionality exception, it is alleged that the criticized legal provision conflicts with the constitutional principle *of equal rights*, given that the court which pronounced the divorce may grant the spouses to keep the married name, a decision motivated by the best interest of the minor who resulted from this marriage.

Examining the unconstitutionality exception, the Court ascertains that the author of the exception asserts that the unconstitutionality of the same legislative solution, this time comprised within art. 383 par. (2) from *the new Civil Code*, showing that granting one of the spouses the right to keep the married name and after the dissolution of the marriage is detrimental to the other spouse's right to bear a name and is not justified by the necessity of protecting the child's superior interest resulted from the marriage, given the fact that the spouse who was granted to keep the name can remarry at anytime.

The court also states that the criticized legal text does not create privilege or discrimination, being applicable to all people who would find themselves in the hypothesis regulated by the legal disposition, so both for the wife who had the husband's name during marriage and for the husband who was in the same situation.

For all the reasons presented, the Constitutional Court *deems unfounded the unconstitutionality exception* of provisions of art. 383 par. (2) of the *Civil Code*.

4.1.2. *DECISION no. 227 from May 9, 2013 referring to the unconstitutionality exceptions of dispositions of art. 403 from the Civil Code* [24]

When motivating the unconstitutionality exception, it is alleged that the dispositions of art. 403 from the Civil Code *are unconstitutional*.

It is also asserted that the extension of applicability of this legal text is called in question regarding the status of minors born outside the parent's marriage, *since the new Civil Code* does not have a separate chapter related to the status of minors born outside the parent's marriage, *unlike the former Family Code*.

Examining the unconstitutionality exception, the Court ascertains *that the object of the unconstitutionality exceptions is constituted by the provisions of art. 403* of the Law. *no. 287/2009* regarding the Civil Code, republished in Romania's Official Gazette, Part I, no. 505 from July 11, 2011.

The Court notes that, in reality, the points made do not constitute a genuine criticism of unconstitutionality, but represent issues related to the interpretation and enforcement. As it is clear from the provisions of art. 126 para. (3) of the Constitution, only the courts can rule on the interpretation and application of the law, the High Court of Cassation and Justice having the power to unify the judicial practice.

Thus, it is clear that the things showed in the *unconstitutionality exception are aspects whose solution exceeds the competence of the Constitutional Court*, which also determines *the inadmissible nature of the plea of unconstitutionality*.

For these reasons, the Constitutional Court *rejects as inadmissible the exception of unconstitutionality* of art. 403 of the Civil Code.

4.2. Reflection of the provisions of the New Code of Civil procedure in the Constitutional Court decisions.

4.2.1. *DECISION no. 266/2014 referring to the exception of unconstitutionality to the provisions of art. 200 of New Code of Civil Procedure, as well as, of those from art. 2 par. (1) and. (12) and art. 601 from Law no. 192/2006 regarding mediation and organization of the mediator profession, in effect from 25.06.2014* [25]

When motivating the exception of unconstitutionality, its author asserts that the provisions of art. 200 from the Code of Civil Procedure are unconstitutional as the application of these procedural dispositions extends to aspects which pertain to the proper judgment of the petition form request.

[23] Decision no. 96/2013 was published in the Official Gazette Romania, Part I, no. 165 from March 27, 2013.
[24] Decision no. 227/2013 was published in the Official Gazette Romania, Part I, no. 428 from July 15, 2013.
[25] Decision no. 266/2014 was published in the Official Gazette of Romania, Part I, no. 464 from June 25, 2014

Examining the exception of unconstitutionality, the Court finds that the object of the unconstitutionality exception, as it was noted by the notification ruling, is constituted by the provisions of art. 200 of the Code of Civil Procedure, as well as, those, of art. 2 par. (1) and art. 601 of Law no. 192/2006 on mediation and the mediator profession, published in the Official Gazette of Romania, Part I, no. 441 of May 22, 2006, as amended and subsequently supplemented.

To determine the object of mediation and where the parties may resort to mediation, the Court observes that, as is apparent from art. 2 par. (5) of Law no. 192/2006, the parties may resort to mediation when it comes to the rights that they may possess.

For these reasons, the Constitutional Court admits the exception of unconstitutionality raised by the company CEZ Vânzare – SA from Craiova, Dolj County, through trustee EOS KSI Romania Trading Company –Ltd. in Bucharest, file no. 14.501/215/2013 of the Craiova Court - Civil Division and finds that art. 2 par. (1) and (12) from Law no. 192/2006 on mediation and the mediator profession are unconstitutional.

4.2.2. *DECISION no. 348 from June 17, 2014, referring to the unconstitutionality exceptions of dispositions of art. 650 par. (1) and of art. 713 par. (1) from the Civil Procedure Code*[26]

On the grounds of unconstitutionality exception, the author argues that the criticized legal provisions are unconstitutional, as they establish a subjective criterion when it is decided that the territorial jurisdiction of the courts resolves civil disputes. Article 713 of the Code of Civil Procedure establishes the competence of law enforcement of appeals court for enforcement, a court which is defined in art. 650 par. (1) of the Civil Procedure Code as the court in whose jurisdiction the judicial executor's office who performs the execution is. When examining the unconstitutionality exception, the Court decides that the object of the unconstitutional exception is represented by the dispositions of art. 650 par. (1) and art. 713 par. (1) from the Code of Civil Procedure.

When examining the exception of unconstitutionality, the Court holds that the provisions of art. 650 par. (1) of the Civil Procedure Code determine the court in whose jurisdiction the judicial executor's office is; he also performs the execution as the enforcement court, and the dispositions of art. 713 par. (1) from the Code of Civil Procedure establish the judgment competence of the appeals to be enforced in favor of the enforcement course, a court which is defined in art. 650 par. (1) of the Code of Civil Procedure as being the court in whose circumscription there is the judicial executor's office who performs the execution.

For these reasons, the Constitutional Court rejects as unfounded the exception of unconstitutionality raised by the same party in the same file of the same court and finds that the dispositions of art. 713 par. (1) from the Code of Civil Procedure are constitutional regarding the critics.

5. Compliance with Romanian Constitution of new Civil Code and of new Code of Civil Procedure - the current trends of constitutionalisation of the law.

5.1. From the constitutional doctrine, I selected the following aspects of the current trend of constitutionalization of law as a result of compliance with the Romanian Constitution and the New Civil Code New Code of Civil Procedure [27]

1. The main effect of the Constitution supremacy and of the existence of the Constitutional Review*l aws made by a judicial authority* is the *constitutionalization of law*. This is a complex *legal phenomenon* that affects the whole legal system through the interaction established between the legal norms of the fundamental law and other legal norms inferior to the Constitution. 2. The constitutionalisation of law is defined as a *general process*, which involves a certain amount of time, beginning with the adoption of the constitution and continued mainly under constitutional jurisdiction control especially created by the fundamental law to ensure its supremacy, a process that gradually affects all branches of the legal system. 3. It consists of *the progressive interpretation* of the norms in the constitution and of those inferior to the constitution and is manifested through two phenomena: one *ascending* of quantitative increase of constitutional norms and another *descending*, going deeper into these rules. 4. The *multiplication* of constitutional norms is achieved primarily through the collection by the fundamental law of rules and principles specific to other legal norms which grants constitutional value to them. 5. Conversely, the dissemination of constitutional norms in the legal system materialize through the impregnation of law branches with constitutional norms directly applicable which take into account the specificity of the field in which they are applied, but which tend to impose the standards with a bigger legal impact. The law constitutionalisation does not necessarily presuppose, but it can be supported by the existence of *favorable conditions*. 7. The practice of various countries has shown that the process of constitutionalisation of law is much more *accelerated* in the field of *fundamental rights*, where the direct applicability of constitutional norms is more easily perceived. 8. *The citizens' direct public access to constitutional justice* is a catalyst of the process of constitutionalisation, although it does not constitute an absolutely necessary condition for it to manifest. 9. As a direct *consequence* of

[26] Decision no. 348/2014 was published in the Official Gazette of Romania, Part I. no. 529, from July 16, 2014.
[27] Ioan Muraru and Elena Simina Tănăsescu, op. cit.: 80-82.

constitutionalisation, *the transformation of law* under the influence of fundamental law means the deduction of new legal rules based on existing ones by canceling legal norms contrary to the Constitution and by interpreting and applying legal rules so that they are consistent with those contained in the fundamental law. 10. Indirectly, this transformation involved a simplification of the legal system, through which the latter is prevented from becoming rigid and is stimulated to permanently liberalize itself.

5.2. From the constitutional doctrine, I selected the following aspects:[28]

1. Constitutionalisation of law is the effect of supremacy of the Constitution. Constitutionalisation is a complex legal phenomenon involving the entire legal system and consists of the interaction between legal constitutional norms and other legal rules of constitutional law which have a diminished legal power, inferior to the Constitution. 2. The phenomenon of the constitutionalisation of law appeared as a transformation process of some legal rules of certain branches of law in constitutional rules. Therefore, constitutionalising law designates a process of transformation of some rules and principles of law rules and constitutional principles. 3. The process of constitutionalisation does not occur on its own. It presupposes the existence of two conditions: a) the first and most important condition is the existence of a Constitution. b) the second is the existence of a judicial body that can ensure the supremacy of the Constitution. 4. There are a series of consequences resulting from the process of the constitutionalisation of law. These consequences are either direct or indirect. Among direct consequences there are: a) the general obligation of the entire society to observe the constitution. b) the annulling of legal norms contrary to the constitution. c) the interpretation of legal norms in accordance with the constitutional text. 5) The indirect consequences of the law constitutionalisation phenomenon are the modernization, unification and simplification of the legal order.

Making the most out of the above mentioned things, I can assert that through the constitutionality review, some principles of law have a constitutional value.

6. Conclusions

In our opinion, the aim of the study regarding current trends of constitutionalisation of the new Civil Code and of the New Civil Procedure Code - Selective aspects has been achieved.

The main directions to reach the set aim were the following:

1) The first judicial review of the constitutionality of the law established in the United States and in Romania – their consequences. I selected for this study the first judicial review of the constitutionality of the law established in the United States and in Romania, as in our opinion, for the review of constitutionality, the following conditions must be met: a) the existence of a Constitution. b) the existence of a judicial-type mechanism to ensure the supremacy of the Constitution. Both countries met those conditions at that moment. Furthermore, the foundation of the constitutional review, established in the two countries, continued in the two country, under the conditions specified above. Regarding the diachronic evolution of the constitutional review in Romania, various forms of review were highlighted, taking into account the historical evolution of the Romanian state.

2) Reflection of the constitutional principles in the new Civil Code and the new Code of Civil Procedure.

The paragraph begins with the tackling of some theoretical issues regarding the relationship between constitutional principles and the principles of the New Codes. The following concepts-principles are contained within these theoretical aspects.

They are established by the general theory of law and by the constitutional doctrine: a) principles of law. b) general constitutional principles. c) rights principles. d) general principles of civil law. e) the fundamental principles of the civil trial. Following these theoretical studies, I proceeded to identify the constitutional principles in the New Civil Code and the New Code of Civil Procedure.

3) Reflection of the dispositions of new Civil Code and of the new Code of Civil Procedure in constitutional provisions. From the analysis of a significant number of Decisions taken by the Constitutional Court, I only referred to the ones which concerned the seizing of the court, only those which referred to the principles of the two codes.

4) Compliance with the Romanian Constitution of the new Civil Code and of the new Code of Civil Procedure - the current trends of constitutionalisation of the law.

5) From the constitutional doctrine, I selected the following aspects regarding the current trend of constitutionalization of law as a result of compliance with the Romanian Constitution of the New Civil Code and New Code of Civil Procedure: a) The definition of the concept of constitutionalisation. b) The multiplication of constitutional norms. c) The dissemination of constitutional norms within the legal system as a whole. d) The direct consequence of constitutionalisation is represented by the right under the influence of the fundamental law. e) The simplification of the law.

6) The four parts of the study may be considered a contribution to the broadening of research regarding current trends of the constitutionalisation of the new

[28] Ştefan Deaconu, op. cit: 96-98.

Civil Code and the new Code of Civil Procedure – selective aspects, in accordance with the current trend in the field.

7) I would also like to specify that the study above is beginning of a complex and complete vision, which is not exhaustive on the area under analysis..

8) Given the selective approach of the current trends of the constitutionalisation of the new Civil Code and the new Code of Civil Procedure – Selective aspects, the key-scheme proposed may be multiplied and extended to other relevant subsequent studies, given the vastness of the area under analysis.

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