CODIFICATION IN THE 21ST CENTURY: THE NEW ROMANIAN CIVIL CODE

MONNA-LISA BELLU MAGDO* **IRINA MOROIANU ZLĂTESCU****

Abstract:
Noul Cod Civil încearcă o reformă de recodificare majoră, care reflectă tradiția şi cultura juridică națională, prin continuitate, asociată cu cadrul conceptual şi de reglementare a realităților româneşti şi cu tendința generală de emergență cu dreptul european, în ambianța mondializării. Studiul analizează o serie de aspecte introduse prin Noul Cod Civil, pornind de la noua abordare a instituțiilor dreptului comercial, o reconsiderare a instituției faptei de comerț şi comerciant, care defineşte conceptele de întreprindere şi profesionist, la elemente privind drepturile personalității, atributele de identificare ale persoanei şi exercitarea dreptului acesteia de a dispune de sine însuşi, şi mijloacele de apărare a drepturilor nepatrimoniale.

Cuvinte cheie: Codificare, Noul cod civil, dreptul privat, drepturi patrimoniale, drepturi nepatrimoniale, drepturile personalității, regimul matrimonial legal, filiația.

Résumé:
Le nouveau Code civil tente une réforme de recodification majeure, qui reflète la tradition et la culture juridique nationale à travers la continuité associées au cadre conceptuel et réglementaire des réalités roumaines et la tendance générale qui se dégage du droit européen, dans le contexte de la mondialisation. L'étude examine un certain nombre de questions introduites par le nouveau Code civil, sur la base de la nouvelle approche par les institutions de la loi commerciale, un réexamen de l'acte de commerce et de l'institution du marchand, qui définit les concepts d'«entreprise» et de «professionnel» ajoutant des éléments tels que les droits de la personnalité les attributs d'identification d'une personne, l'exercice du droit de celle-ci à disposer de soi-même, et les modalités de défense des droits non-patrimoniaux.

Mots-clés: encodage, nouveau code civil, droit privé, les droits de propriété, les droits non-patrimoniaux, les droits de la personnalité, le régime matrimonial légal, filiation.

In last century's final years and our century's first years, we have witnessed a redefinition of the juridical system as a whole in terms of the paradigm of human rights and fundamental freedoms.[1] It turned into a point of observation of the evolution of this human rights ideology and, of course, of modern individualism, the law being defined as an instrument for the achievement of human rights and fundamental freedoms.[2] On the other hand, the new codes adopted in recent years by various European countries are based on these very rights. The codes have become instruments "for the protection" of human rights and fundamental freedoms under the influence of the European Court of Human Rights.[3]

Such rights are to be found both in the Constitution and in the Civil and Criminal Codes, alongside public freedoms.

Romania's adherence to the Council of Europe in 1993 and the European Union in 2007 made the European legal system, as an integrating element, become compulsory and pre-eminent, and be considered a priority as compared to the domestic legislation that has to be consonant with the international legal system. This is the meaning to be attached to arts. 11 and 20 in the Constitution of 1991, revised in 2003[4], while it also entails the need for revising the fundamental law.

A general historical survey shows that the Romanian juridical system, which belongs to the Romano-Germanic system[5], includes codified or

* Prof., PhD, titular member of the Academy of Legal Sciences, Romania.

** Prof., PhD, titular member of the International Academy of Comparative Law, the Hague

[1] See X. Dupré de Boulois, *Droits et libertés fondamentaux,* Presses universitaires de France Paris, 2010, p. 15.

[2] Ibidem.

[3] Ibidem.

[4] See Irina Moroianu Zlătescu, *Constitutional Law in Romania,* Kluwer Law International, The Hague, London, Boston, 2013, p. 23; Gheorghe Iancu, *Proceduri constituționale. Drept procesual constituțional,* Monitorul Oficial, Bucureşti, 2010, p. 38; C. Ionescu, *Tratat de drept constituțional contemporan,* All Beck, Bucureşti, 2003, p. 546 et seq.

[5] See R David, *Traité élémentaire de droit civil comparé,* Editions Ides et Calendes, Neuchetel, 1971, p. 43; V. D. Zlătescu, *Mari sisteme de drept contemporan,* ProUniversitaria, 2012.

non-codified normative acts, most of the codified ones being two centuries old.[6] Their application imposed an ample interpretation process, both because of the historical and the socio-economic elements, and because of the requirements of integrating the European law and, obviously, the European jurisprudence. In recent years, we have witnessed a trend towards the unification of the legislation, its harmonization with the sources of the European law, the treaties where our country is a party and, of course, the jurisprudence of the European Court of Human Rights and the European Court of Justice, while not neglecting the important role to be played by the national element of continuity in the legislation harmonization process. This phenomenon is to be noticed, for instance, in the case of the German Civil Code, the French one, the Italian one, if we are to only refer to states belonging to the European Union, but is to be found in the Swiss Code as well. Obviously, all examples refer to states belonging to the Roman-Germanic law system.

Romania also faced the need to elaborate and adopt a new Civil Code[7], a new Criminal Code[8], a new Civil Procedure Code[9] and a new Criminal Procedure Code[10], meant to include the values of the European juridical culture while also respecting the national traditions, and play an important role in the process of modernizing the Romanian legislation in consonance with the trend towards the universality of law. The coming into force of the Codes raises, of course, the question of a training of all those involved in the administration of justice corresponding to the present day requirements of society.[11]

It is worth mentioning that the protection and the promotion of the human rights and fundamental freedoms is an essential dimension of the new Codes, fully harmonized with the international regulations, in an attempt to have a unitary legal framework, based on the ascending evolution of the European law and the incident international norms.[12]

Following is an attempt to analyze the evolution of the Civil Code, taking into account the historical affiliation of the Civil Code with the Romano-Germanic system, as shown before and, above all, the fact that the Romanian Civil Code is of French inspiration. However, in order to see the evolution, one has to start with history.

As pointed out in the juridical literature all over Europe, the end of the 18th century and the beginning of the 19th century were characterized by a strong codification trend. In the 19th century, following the example of Napoleon's legislation, many European countries embarked on codification. Thus, every constitutive subject matter of a juridical branch was treated systematically for just one purpose. This is how such juridical branches as civil law, commercial law, criminal law, civil procedure law, criminal procedure law were developed, each based upon a legislation included in one single civil, criminal or commercial code, which became the main source of law for the respective branch.[13] In this context, the first prince of modern Romania, Alexandru Ioan Cuza, introduced a new, modern legislation and created a unique legislation for the Romanian national state, thus putting an end to the feudal chaos and arbitrariness and instituting the principle of legality as the foundation of the Romanian social life. His reign was therefore a period of deep transformations. It is during this period that the Romanian Civil Code of 1864 was elaborated and implemented. It was promulgated on 4 December 1864 and its publication in the "Official Gazette" started immediately – a process that ended on 19 January 1865.

It should be mentioned that during the years of totalitarianism, the Civil Code was literally torn apart. In 1954, the subject matters of family relations and relations between persons were taken out of the Code and legislated separately by

[6] See Irina Moroianu Zlătescu, *Codification in the fields of human rights,* in Codification in International Perspective, Springer, London, 2014, pp. 353-361.

[7] In force since 1 October 2011.

[8] In force since 1 February 2014.

[9] In force since 15 February 2013.

[10] In force since 1 February 2014.

[11] See Irina Moroianu Zlătescu, Monna Lisa Belu Magdo, *Rolul jurisprudenţei în aplicarea unitară a legii,* în „Drepturile Omului" nr. 3/2012, p. 30 et seq..

[12] Also see Irina Moroianu Zlătescu, *Constitutional Law in Romania,* op. cit.

[13] See Victor Dan Zlătescu, *Tratat elementar de drept civil român.* It is worth mentioning that the late author, professor, PhD, was titular member of the International Academy of Comparative Law in the Hague, member of the International Institute of Law of French Expression and Inspiration (IDEF), creator of the modern school of comparative law in Romania, member of Romania's first Constitutional Court.

means of the Family Code and Decree No. 31, in effect till 2011. As will be shown, starting in 2011 the subject matter is to be found again in the new Civil Code. After December 1989, the Romanian law resumed its rightful place in the major Romano-Germanic legal system. The transition was also facilitated by the fact that Romania was the only former socialist country that had maintained the Civil Code and the Commercial Code. In 1991, our country adopted a new Constitution, which was later revised in 2003.[14] In 1993, Romania became a member of the Council of Europe and in 2007 a member of the European Union and, under the circumstances, it had to reconsider its entire legislation, to harmonize it with the European one.[15] New normative acts and, obviously, new codes were thus adopted. A new Civil Code came into force on 1 October 2011.

The effort to decipher the spirit of this new code reveals its juridical reasons and commandments, of which providing unity with the legislation of private law relationships and also pointing out the rupture point from the old code, as intellectual source of the present one, are prevailing.

The basic novelty of the new Civil Code refers to the application of its norms in the relationships between professionals as well as the relationships between the latter and other subjects of law. This results in the unity of private law legislation and in the change of the system legislating the commercial law, whose autonomy was replaced by the system of private law unity, even if as far as commercial relationships are concerned, civil regulations are characterized by certain derogations claimed by the specificity of these relationships.

The new legislating system instituted by the Civil Code results in a new approach to the commercial law institutions, a reconsideration institution of trade act and tradesman, defining the concepts of enterprise and professional. The legislating unity characterizing the Civil Code, incidental with the legal acts of professionals, does not give up the classic concept of commercial law, even though the Commercial Code of 1887 of Italian inspiration was abrogated, since the forms of trade activities – production, distribution, execution of work and provision of services, which confer the juridical not the economic meaning of the notion of trade – form the object of special laws.

At the same time, the trading business world, characterized by a specific structure based on common interests, comes, to the extent the legal norms or the contractual freedom allows it, to make its own norms, regulating the mutual relations, elaborating practices, customs, in most different forms, standard contracts, models of contract forms, general conditions, standard clauses, standards – clauses expressed in the form of a code (like the Incoterms rules) with large implications and interconnections, not only at international but also domestic level, with extended effects on law in general and contracts in particular.

These requirements of social and commercial relations in general resonated at the level of the Civil Code, to the effect that customs were acknowledged as sources of law, to the extent the law refers to them, and also by regulating the framework contract (art. 1176 in the Civil Code), the standard contract (art. 1175 in the Civil Code), and the contract concluded with consumers (art. 1177 in the Civil Code).

The new Civil Code of "private law" shows and integrating trend, by giving up legislating family relations in a distinctive code, by abandoning the unitary regulation expressed in a normative act – such as the extinctive prescription (regulated under Decree No. 167/1958) and the international private law relationships (regulated under Law No. 105/1992) – and including them in Book VI and Book VII of the Civil Code.

Insufficiency of criminal law means related to the protection of the human being and of the previous regulation in this matter, obsolete in its letter and spirit, was solved by removing the old regulations and introducing in Chapter II of the Civil Code – under the title "The respect owed to human beings and their inherent rights" – an ample regulation referring to the personality rights[16], the

[14] See Irina Moroianu Zlătescu, *Romanian Constitutional Law,* op. cit., pp. 113-126.

[15] See Irina Moroianu Zlătescu, Human rights. A dynamic and evolving process, Pro Universitaria, 2015, p. 64 et seq.

[16] See Irina Moroianu Zlătescu, Monna-Lisa Magdo Belu, *Personality Rights in the Romanian Civil Code,* in „Fiat Iustitia", nr. 1/2014, Pro Universitaria, p. 105 et seq.

identifying attributes of the person and the exercise of the person's rights to make decisions in relation to its life and fate.

The provisions in this chapter achieve correlation between human being's protective legal measures with scientific progress in the medical field, by prohibiting eugenic practices, examination of a person's genetic characteristic features, interventions upon the genetic characteristic features, interventions upon the human being, all being limited to therapeutic or scientific research purposes and only in the cases expressly and limitedly provided by the law.

It is worth mentioning the provision referring to the inviolability of the human body with its corollary – human organs, tissues and cells harvesting from the living (art. 68 in the Civil Code) and from the dead (art. 81 in the Civil Code); also noteworthy is the provision referring to respect of the private life and dignity of the human person along with the right to freedom of expression, whose exercise can only be restricted in the cases and within the limits provided by the law.[17] The law maker also placed in the body of the Civil Code the means to defend non-patrimonial rights (art. 253 in the Civil Code); some means are of a non-patrimonial nature (consisting of prohibition of the illegal action, discontinuance of the violation and its prohibition in the future, acknowledgment of the illegal nature of the action and any other measures the court may appreciate as necessary to restore the violated right), while others are patrimonial.

In cases of physical integrity and health damage, the Code explicitly acknowledges the right to pecuniary compensation for loss of or failure to gain in employment or for the increased life needs of the victim, as well as the right to redress for the moral prejudice such as the limitation of the family and social life possibilities (agreements for compensations).

In contradistinction to the provision in the old Code that did not explicitly enshrine the right to pecuniary compensation for moral prejudices – which, at a certain moment in the practice of the Supreme Court, led to a total denial of this form of redress as it was considered, in consonance with the communist philosophy, a means to get rich, an opinion challenged by the doctrine and the jurisprudence of the other courts based on an extensive interpretation of art. 998 in the Civil Code – the present Code goes even further acknowledging pecuniary compensation not only for direct moral prejudices, but also for 'rebound' moral prejudices, in favour the ascendants, descendants, brothers, sisters and surviving spouse, for the pain caused by the victim's death, as well as in favour of any other person who may prove existence of such a prejudice (art. 1391 in the civil Code).

Bringing the provisions regarding the family back to the Civil Code, such as they used to be from 1864 down to 1954, is one novelty of the present Code. Not only does the latter regulate for the legal marriage as the foundation of the family, based on full equality between the spouses and their duty to raise and educate their children to the children's best interests, but it also provides for the causes for nullity and the dissolution of marriage by divorce.

Regulation of the divorce is characterized by increased leniency, not only in terms of the contentious procedure before the court, but also in terms of its partial de-judication, by administrative or notarial means. This leniency of the divorce is not to be understood as weakening the importance of the family or weakening the family's protection under the Romanian law, but as a possibility given to those who can no longer continue their marriage to resort to a simple and civilized solution.

At the same time, this extrajudicial way of divorcing reduces the list of pending cases before the courts by the number of cases where, given the agreement of the spouses in all aspects, the court only has to take note of the divorce as remedy, thus putting an end to a situation that is irremediable.

In terms of the patrimonial relations between the spouses, the provisions in the new Civil Code show more freedom and flexibility as compared to the old system of the Family Code, which was extremely restrictive, for it did not allow the spouses to regulate their patrimonial relations by mutual agreement, forcing them to conform the patrimonial aspects of their marriage to the unique matrimonial regime – a legislated imperative – namely, the community property regime.

[17] See Irina Moroianu Zlătescu, *Human dignity and bioethics,* in „Drepturile Omului", No. 2/2015, IRDO, p. 20 et seq.

According to the new regulation, the spouses may choose the matrimonial regime of their marriage from among those provided by the law by means of an authentic matrimonial convention, and also may modify it during their marriage. The object of a matrimonial convention can also be the clause of preciput, according to which the surviving spouse is entitled to take, without payment, and prior to the sharing of the legacy, one or several common assets owned in joint property or co-proprietorship.

By re-introducing the pluralism of matrimonial regimes, the new code also institutes the legal matrimonial regime, applicable whenever the spouses do not express their will by concluding a matrimonial convention for adoption of a conventional matrimonial regime.

The legal community regime, regulated by the new code, is pretty much the same as the one regulated by the old Family Code, as according to this matrimonial regime, the assets acquired by the spouses during their marriage are presumed to be common property, unless they are proved to belong to the category of those assets indicated by the law to be private property.

The difference between the legal community and the community of assets provided for by the old Family Code lies in the introduction of the principle of mutability of the matrimonial regimes, which allows the regime of legal community to be applied for a limited period during the marriage, marked by the change of the matrimonial regime, not for the entire duration of the marriage, as is the case with the regime of community of assets.

The new regulation regarding administration of the spouses' assets, in the framework of the regime of legal community, is closer to an individualistic approach in the case of exclusive administration, without denying however equality between the spouses in the framework of parallel (concurrent) administration or common administration. Parallel administration implies the power of each spouse to administrate the community of assets by himself/herself, meaning that either spouse may sign legal documents by virtue of the authorization conferred by the law, not by the implicit mutual mandate, consecrated by the regulation in the Family Code. In the case of common administration, the conclusion of administrative documents regarding certain common assets, expressly provided by the law, need the consent of both spouses. It is only in the case of exclusive administration that we can see an exacerbation of the individualistic approach in that it presumes conclusion of certain documents, referring to common assets, by only one of the spouses – due to the personal nature of the juridical act.

Conventional matrimonial regimes are those of separation of assets and conventional community.

The matrimonial regime of the division of assets is of a separatistic type, offering the spouses a large patrimonial independence, for all assets are either spouse's own assets, both those owned when the marriage is contracted and those acquired during the marriage. Each spouse administrates his/her own assets, so that this matrimonial regime evinces two distinctive managements. However, the family's residential house is compulsorily used by both spouses, no matter whose property it is, the legal documents related to the disposal or the administration of the residential house requiring the written consent of both spouses. It should not be forgotten that this matrimonial division regime is always applied together with the primary regime, which brings along the corrections needed for a family to function well and requires both spouses to provide the material conditions needed for the household and the raising of their children.

The conventional community regime is a mixed matrimonial regime which, based on matrimonial convention, derogates from the provisions regarding the legal community either by including in the community the assets acquired or one spouse's debts contracted before or after the marriage, or by limiting the community to the assets or the debts expressly specified in the matrimonial convention, no matter whether they are acquired or contracted before or during the marriage.

The conventional community regime may be included a clause according to which the conclusion of certain administration documents shall be compulsorily made with the consents of both spouses, while in case one of them is in a position that makes it impossible for him/her to express his/her will or he/she exhibits an abusive opposition, the other spouse shall be entitled to conclude the document by himself/herself, with prior consent by the guardianship court.

It is for the first time that the Civil Code (and the Romanian law) has legislated human reproduction medically assisted with a third donor.

The Civil Code regulates in detail the legal situation of children thus conceived as well as the filiation relationships, for the biological filiation of a child thus conceived does not correspond to the established legal filiation, since the genetic material belongs to a third donor. For this particular reason, the parents or the unmarried woman who choose this method of reproduction, have to express their consent before a notary, thus accepting the consequences of such an undertaking, under conditions of strict confidentiality.

As far as the mother's filiation is concerned, it results from the birth, and if the woman is married, the child's father will be its mother's husband by application of the presumption of paternity.

Characteristic of the filiation coming from the application of this way of procreation is the fact that it can be challenged by no one, not even by the child, and negation of the paternity can only be filed if the mother's husband did not consent or gave up his consent, under the conditions provided by the law, in relation to this method of procreation and in spite of that he was however imposed the legal presumption of paternity.

In order to guarantee the immutability of a child thus conceived and sanction the mother's possible out-of-marriage relationship that resulted in the child's conception, and dissimulation of a medically assisted reproduction with a third donor, in the framework of the negation of paternity legal action, the guardianship court shall have to produce evidence to prove not that the petitioner is not the child's biological father but that the child was not conceived by the method of assisted medical reproduction with third donor.

The new regulation regarding filiation mostly keeps with the traditional approach, consecrated in the Family Code, but it also comes with new aspects related to the context of the present day evolution of the Romanian society and of the human reproduction medical techniques, which may entail certain implementation difficulties and therefore have to be given a unitary interpretation, so that the best interest of the child should be adequately and efficiently protected.

As with other legislation, the new Civil Code also had to solve the issue of compatibility between the juridical traditions and the uniformity elements, of which the economic ones are prevailing. One of them is the institution of trust, to which Title IV in the new Civil Code is devoted. The Code, which has taken over the definition and the rules applicable to the legal regime of the trust and fiduciary property from the French Code, regulates trust for management purposes (art. 777 in the Civil Code), the warranty trust and trust for free-of-charge transmission purposes.

Trust is regarded this time as an institution independent from the mechanisms of trusteeship, a set of dedicated assets, without subject, but which is not completely separated from the patrimony of the settlor and the patrimony of the trust, for management and guarantee purposes. The trust status is strongly conditioned by fiscal rules, but that does not prevent the civil conceptualization.

The 'duties' law prevails upon the private law, whose object are the inter-human private relations, relations whose mechanism is the duty. In contradistinction with the duties coming from offence, whose unique object is to redress the victim and where the judge's role is more obvious, duties coming from legal acts are less praetorian as the parties need clear and accurate rules provided by the law, so that the changes affecting their content are less visible but sometimes quite significant.

Legal interventionism and jurisprudence variations, associated with legislative innovations, receptive to the multiplication of inter-human relations, governed by historical, political, social and particularly by the incidence of economic factors, could be seen not only in the juridical institutions but also in the juridical philosophy of the principles, which operated an underground transformation of the duties, mostly of European value and integrating tendency.

Thus, good faith, consecrated and presumed by the present Code, integrated into the principles of the Civil Code, is included in the structure of the juridical relationship, adding to the latter a moral value as well. It produces effects in the field of civil liability and the nullity of legal acts, suppressing or restricting the latter, while under certain circumstances it may wholly or partly cover the irregularities of a legal act, taking the form of ignorance or error.

The general regulation of good faith with respect to contracts, at the time when the contract is concluded and during its execution, the text mentioning that the parties may not remove or limit this duty, gives expression to the guiding principle of contractual loyalty, in compliance with the European contract law.

The statement in art. 15 in the Civil Code referring to the abuse of rights does not confer this principle of restrictive nature an antithetic value to the principle of good faith, for it is not always that one whose conduct is opposed to good faith is also ill-meaning. The text of the Civil Code, just like that of the Code of Québec, embraces the eclectic conception about the abuse of rights, evoking the subjective criterion – by referring to the purpose of harming or producing damage to somebody else, which involves taking into account the perpetrator's subjective attitude – as well as the objective criterion – by taking into account the excessive, unreasonable, disproportionate exercise of the right as compared to the good faith standard.

The present Civil Code has extended the concept of civil liability from violation or infringement of a subjective right to violation of a legitimate interest, thus synthesizing in a text (art. 1349 in the Civil Code) what the jurisprudence and the doctrine had promoted in the application of the old Code. It goes without saying that in order to be legitimate the violated interest, by its manifestation, should have the appearance of a subjective right, that is, have enough stability and permanent nature, and not be contrary to the law, public order and good morals.

The protective conception of the regulation regarding the civil liability has been extended in the present Civil Code from the prejudice produced by violation or infringement of a subjective right or violation or infringement of a legitimate interest also to prejudices resulted from the loss of a person's opportunity or possibility to gain something or avoid a loss. Until the new Civil Code came into force, compensation of the prejudices produced as a result of the loss of an opportunity, which entails an attenuation of the certitude of prejudice requirement, went unnoticed.

Evaluation of the compensation for this type of prejudice must take into account the incertitude margin or the 'random' element that affects the possibility that the opportunity be achieved.[18] In the spirit of the text of the Civil Code (art. 1532 para 2) compensation of a prejudice produced as a result of the loss of an opportunity depends on the probability that advantage would have been obtained, by taking into account the circumstances and the actual position of the creditor.

The new contractual ethics of contractual solidarity, evoked in the European codification projects, has also found its subtle echo in the present Romanian Civil Code (art. 1534), which has instituted an indirect liability of the creditor who contributed to the occurrence of the prejudice, in the form of corresponding diminution of the compensation owed by the debtor. The same text of art. 1534 in the Civil Code provides that the debtor shall not owe compensations for those prejudices the creditor could have avoided with minimum diligence.

Based on the same ethic commandment of solidarity, evaluation of the amount of the compensations shall also take into account the costs covered by the creditor within reasonable limits to avoid or limit the prejudice (art. 1531 in the Civil Code).

The value attached to life and personal safety is transposed into the present Code at the level of contractual relation also by the safety duty, initially present in the transportation contract and later extended to other contracts as well, including hotel business contracts, show business contracts, contracts for the organization of sportive events or the legislation for the protection of consumers with respect to the selling of dangerous or defective products.

Despite the lack of an express piece of text, the consent vices theory involves that in the pre-contractual stage the contractual parties shall take into account that the present Code provides for the information sharing obligation, as an implicit legal duty. This duty refers to several circumstances and information related to the future contract that is considered important for the parties involved.

The pre-contractual duty, inferred from the provisions of art. 1214 in the Civil Code, referring to deceit is different from the contractual information sharing duty which is particularly

[18] See Monna-Lisa Magdo Belu, Irina Moroianu Zlătescu, *Dreptul persoanei la valorificarea şansei şi a speranţei legitime,* in „Drepturile Omului", no. 3/2015, IRDO, pp. 25-30.

applicable to consumption contracts and consists of the parties' duty to share pertinent and useful information related to the execution of the contract,; it involves such duties as informing the buyer about the dangerous nature of the acquired product, advising the buyer in relation to the exploitation of the product, its installation, etc.

This information sharing duty has an extended significance in the professional-consumer relationship and failure to comply with it can be legally sanctioned by civil and administrative means.

With no intention to have exhausted all novelty and modernity aspects of the new Romanian Civil Code, we can synthesize by saying that this Code attempts a major re-codification reform, while reflecting the national juridical tradition and culture by continuity associated with the conceptual legislating framework of Romanian reality and the general trade of convergence with the European law on the general background of globalization.

As is expectable, the fate and the efficiency of some of the provisions of the Civil Code will be marked by its implementation, by the theoretical analysis of the doctrine and the dilemma of social acceptability, the dilemma of the discrepancy between the juridical form and the new institutions on the one hand and the Romanian social realities on the other hand.

ASPECTE DE CONSTITUŞIONALITATE PRIVIND REGIMUL PROBELOR ÎN PROCESUL PENAL

SILVIU GABRIEL BARBU*
VASILE COMAN**

Abstract:
The work deals with one of the amendments contained in the draft law of 2014 on the revision of the Constitution, regarding the permission to use unlawfully obtained evidence in criminal proceedings, if they are in favor of the accused, by completing in this sense Art. 23 of the Constitution with a new paragraph, Para. (13^1). The Constitutional Court, by Decision no. 80 of 16 February 2014 declared this completion unconstitutional by the reference on the use of evidence gathered unlawfully, because it infringes the limits provided by article review. 152 Para. (2) of the Constitution.

Key words: evidence in criminal proceedings, Constitutional Court, review of the Constitution, due process.

Résumé:
L'étude porte sur l'une des modifications contenues dans le projet de loi de 2014 sur la révision de la Constitution, concernant l'autorisation d'utiliser des preuves obtenues illégalement dans les procédures pénales, quand elles sont en faveur de l'accusé, en complétant dans ce sens Art. 23 de la Constitution par un nouveau paragraphe, Para. (13^1). La Cour constitutionnelle, par la décision no. 80 du 16 Février 2014, a déclaré que la modification est inconstitutionnel par la référence sur l'utilisation des éléments de preuve obtenus illégalement, parce qu'il viole les limites prévues par la révision de l'article. 152 Para. (2) de la Constitution.

Mots clés: éléments de preuve dans une procédure pénale, l'examen Cour constitutionnelle de la Constitution, une procédure régulière.

I. *Introducere.*

Prin adresa nr. 191 din 7 februarie 2014, preşedintele Senatului a înaintat Curții Constituționale proiectul de lege privind revizuirea Constituției României, inițiat la propunerea unui număr de 108 senatori şi un număr de 236 de deputați.

Examinând proiectul de revizuire raportat la dispozițiile şi principiile constituționale, în baza art. 146 lit. a) din Constituție de verificare a constituționalității inițiativelor de revizuire a legii fundamentale, prin Decizia nr. 80 din data de 16 februarie 2014[1] Curtea Constituțională a apreciat

* Conf. univ. dr.
** Asist. univ.

[1] Publicată în Monitorul Oficial, Partea I, nr. 246 din 7 aprilie 2014.