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Ph.D. Thesis Summary in the field of

ECONOMICS AND INTERNATIONAL AFFAIRS

A perspective upon the Economic Analysis of Law

O perspectivă asupra Analizei Economice de Drept

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Ph.D. Thesis Keywords

Legal system; constitutional reform; economic analysis of law; sovereign identity; organizational culture; public management; servicing the state; public social Private Partnership; intercultural dialogue; Romanian Constitution; Chicago School; international history; economic Perspectives; Romanian Constitutional Court; German Federal Constitutional Court; Constitutional Court Decisions; economic policy; Democracy; Internet; Iceland; crowdsourcing; SWOT.

Ph.D. Thesis Acknowledgements English

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Disclaimer: The entirety of this Doctoral Thesis includes constructive proposals for the betterment of current legislation (including of a constitutional nature). These should be interpreted as mere de lege ferenda types of statements and proposals, and in no way construed as to incite towards unwanted or detrimental change which would fall under the scope of the Romanian legal prohibitions.

Ph.D. Thesis Summary Introduction - The Dawn of an Economic Analysis of Law

The modern world reflects plenty of instances of successful companies, as well as failing national establishments. Private actors owe their achievements to several good practices, while troubled states are certainly facing difficulties at several levels and in many key areas. Some countries, ours included, are nimble enough to choose their fate, but an economic analysis of law is crucial to the success of the endeavor. Should we use extrapolation methods to try and solve some of the shortcomings that public entities are confronted with? And if so, how do we go about the process? What are the lessons that can be taught by organizational culture to macro sovereign structures? I tackle the perplexing prerequisites of self-discipline and drive, as well as explore the deep nexus between strategic planning and successful strategies. Ultimately, by harnessing competitive edges in a manner infused with targeting and monitoring performance, and by implementing business continuity planning practices and applications of sustainability concerns, causality can be achieved and the grey areas between hazardous and warranted results cleared.

Managing the intricate State architecture is a daunting task, leaving most experts puzzled to this day as to the best methods of approaching it. The end result should be a purposeful reform, culminating in an administrative apparatus worthy of being deemed excellent, engaged and efficient, functioning in a streamlined manner. However, perhaps the greatest difficulty lies in the fact that in order to attain this desirable outcome, key procedures have to be enacted and key persons have to be selected and endowed with relevant authority. Therefore, what are the keys to unlocking this riddle? How do we manage the State in all its diversity, great offices and controlled enterprises included? What are some of the ways we could optimize the various services that are being rendered to the State? I expound that legal reform must meet economic reasoning, the interests of the management and citizens-shareholders must be reconciled, and cutting-edge means of cooperation in the service of the public good – such as enacting public

social private partnerships – must be explored. These solutions will be necessarily tailored according to national specificities, following an extensive intercultural analysis, in the broader context of globalization.

The thriving interdisciplinary research field of Law and Economics keeps being extremely successful. Its forty year existence (out of which more than twenty years have been of utmost formal recognition), the vast amount of theoretical research and the important practical legal implications it produced (via regulations as well as court decisions), and also the fact that it spread way beyond its birthplace borders are all reasons for it. In its specificity, it strives to explain and predict the behaviors of social participants. It also tries to align laws with desired consequences in areas such as economic efficiency, the distribution of income and wealth, or other values. Law and Economics should become a driving force in any national social change, decisions regarding the rules of the social game should be reached only upon a prudent and mature process including widespread debate, and Romania should carefully express the way it chooses to persevere and be regarded by other nations. This movement has influenced legal reform in a number of important areas, and in Romania's case it has the potential to crucially positively-impact the entire legal and economic system, through the discussion and application of its principles to the process of adopting the New Constitution. This is the main reason for which this paper will analyze the field of Economic Analysis of Law from its origins to the present and seek to reconcile this foreign framework with the specificities of the Romanian system.

Electronic means of communication such as social media are becoming increasingly important to the way people organize themselves, interact with each other and reach collective decisions. The concept of democracy inevitably lags behind the pace of technological advances because of the imperfect flexibility of the regulations governing it that are currently in force. However, Iceland paves the way for an evolution of the democratic status quo, through its implementation of crowdsourcing in the process of adopting a new Constitution. This paper sets out to establish links between the Icelandic and Romanian models of democracy. It will then provide a

preliminary SWOT economic analysis applied to a potential decision of the Romanian authorities to draw inspiration from the best options provided by the Icelandic experience.

In the current absence of a well-structured framework for applying economic reasoning in the process of settling legal disputes, it is of no wonder that aspects of Law and Economics are being applied inadvertently by the Romanian judges. The Constitutional Court is not immune to this phenomenon in decisions such as those concerning the nature of social care support in Romania, or fiscal responsibility. The Court began to overreach its specific Constitutional mandate by delving into questions of policy, of regulatory opportunity. This behavior is mandated by a lack of specific economic principles agreed-upon by the basic social contract. In the context of a new Constitution, the jurisprudence of the German Federal Constitutional Court is extremely relevant, in its conclusion that a balance must be struck between the freedom of the legislature to regulate economic life and the restrictions that the Constitutional rights impose on the former. Thus, it is clearly implied that the choice of fundamental rights will inevitably translate into a choice of potential actions and attitudes that will be available in the context of economically governing a nation. This paper sets out to highlight these Constitutional arena legal struggles and their potential solutions, so that the quicksand can be overcome.

“Malo Nodo, malus quaerendus cuneus”, the ancient notice authored by Erasmus of Rotterdam, never seemed more evocative than during these troubled times that the World is facing. I have personally felt the effects of the current turmoil in all areas of life: daily activity, family, work, business, entertainment.

The Motivation behind the Ph.D. Thesis Research

This Ph.D. Thesis has originated due to the requirement which has been identified by the Ph.D. candidate author regarding the acknowledgement and need for an innovative perspective upon the field of Law and Economics in general, as well as the emerging field of Romanian Law and

Economics in particular. The Ph.D. thesis is structured upon a potential first, performance second and process third and finally framework. As it is consulted, it highlights these essential points, while also placing a particular emphasis upon a top to bottom approach regarding the review process of the Romanian Constitution, alongside comparing the essential key structures with their European Union counterparts to say the least. The author also places an emphasis upon analyzing the national competitive advantage assets, which upon their review place follow up the analysis with a bottom to top revision, which ensures the consistency as well as comprehensiveness of the thesis overall. This manner of tackling the subject matter reflects innovation due to the fact that it analyses the topic even from the perspective of the general public workforce, and not just from that of its managers. Another innovative aspect contained within the thesis is represented by the fact that it places the issue of Constitutional reform within several key case studies which tackle the current global issues that every country faces at the international level nowadays. The original contribution insofar as the Romanian scholarly research is concerned is represented by the comparative analysis which reveals the impact of the international circumstances upon the national process of constitutional revision, by means of which one can compare the scope and efficiency of the proposed Romanian conducts with those of foreign nations at every step of the way. Up until this point, the scholarly research studies only approach the subject matter from a purely legal or from a purely economics related standpoint. We have chosen to bridge the gap with an interdisciplinary approach and provide some interesting insights which may expand the horizon of the Romanian policy makers when this initiative of reforming the Romanian Constitution will retake center stage within the list of national strategic priorities within the months and years to come.

The statement of purpose containing the Ph.D. Research Objectives

The general objective of our doctoral research can be founded upon a dual top to bottom as well as bottom to top approach regarding offering a Law and Economics perspective upon the Romanian Constitutional Reform process, within the international environment, drawing upon

comparisons with the later for added context and valuable insights. Within a first stage, we have evaluated the Law and Economics framework, as well as that of national competitive advantage, starting from the perspective in which this entire endeavour may be regarded by means of a decision type of process, within which the determining factors represent the evaluation criteria which make up the scientific process itself. In select second stages, the exercise was repeated at sectoral levels, starting from the premise that once identified, specific case studies which present a great potential of being involved in the Romanian Constitutional Reform Process, they may also highlight specific optimal means of tackling the main task undergoing analysis, in a way in which they can act to both reveal as well as to further guide the actual future wording of specific constitutional provisions within the process of drafting the actual New Romanian Constitution. The third and final stage has concerned placing the Romanian Constitutional Reform experience within an international context, and revealing how it will ultimately not represent a mere unilateral sovereign exercise, but rather a comparative study drawing on international case studies and forward-reaching innovative methodologies in order to extract the best solutions which are available and, most importantly, can indeed still be applied within the specific national context with all of its particularities. In other words, the objectives of both the empirical as well as our theoretical research are as follows: Aron Samu - Ph.D. Thesis - Summary 1. Presenting valid practical applications which need to be taken into account within the Romanian Constitutional Reform process from a Law and Economics perspective as well as 2. Grounding the framework of the Romanian Constitutional Reform in a Law and Economics manner of study, which truly reveals the potential to best extract economic benefits from the specific drafting of the legal provisions contained in the national fundamental charter.

The Ph.D. Research Methodology

In order to achieve these specific objectives, we have elaborate a thorough research methodology, which contains the most varied and innovative research methods, in order to be able to optimally reflect the issue of Romanian Constitutional Reform in an international

framework by analyzing it from a Law and Economics perspective. As such, within the current doctoral research we have made use of such research methods as: hypothesizing, comparison, implicitly benchmarking, analyzing, synthesis, as well as applying a specifically designed questionnaire. Hypothesizing has been utilized by us as a scientifically-grounded presupposition especially within the theoretical sections of the doctoral research thesis. The most widely utilized method was that of comparison, implicitly benchmarking, due to the fact that our analysis was carried out with a view upon capturing the evolution of the subject matter within the 2013-2020 timeframe, by comparing the state of affairs at a Romanian national level with that of several countries within the European Union, or even outside of the latter's borders. Also, the comparison method is also present within Chapter 2, where for the first time we have presented a SWOT analysis upon the issue of utilizing digital tools in the process of Constitutional Reform, and have particularly compared the state of the matter within the European Union, European Economic Area, as well as evaluated the Romanian potential in the process. Analysis represents one of the research methods which we have utilized especially within the theoretical part of our doctoral thesis, however it was also certainly present within several other parts of the doctoral research as well. For example, we have analyzed the international framework pertaining to the field of Law and Economics, following which, with the help of the synthesis process, we have managed to filter out that which we have considered to be most relevant, while expressing our personal opinion in the process. Within the third chapter of the doctoral thesis, we have studied the motivation levels within the public administration, by means of applying a questionnaire and analyzing the findings deriving therefrom. This was carried out in order to reveal that the general theory is practically impacted by national particularities at the level of the central public administration. Also, by means of this method, we have tried to evaluate whether certain measures would or would not be optimal as to improving the efficiency of the public management, when analyzed through the perspective of the impending Romanian Constitutional Reform. We must be aware of the best practices in order for those that will draft specific provisions to design the latter in an optimal manner in order to achieve a beneficial level of balance of powers within the State by means of its constitutional framework.

Ph.D. Thesis Summary

Can Romania be viewed as a company? However controversial, we propose to compare it to a corporate structure in order to analyze it from the perspective of the private sector, which is inherently focused on achieving economic efficiency. Regarding Romania as a company that has the remarkable odds of social help for fundamental reform is critical to the further advancement of the state. The chance of constitutional statutory reform and within this method to diplomatically change the nationwide identification on the worldwide arena is really unique. Thereby, if one wants to make the most of the positive returns of the method, it is vital to apply business and also economic theory to the legal reform mix. Only by successfully managing the process which capitalistic companies use to fuel their growth will any type of competitive country do well in its personal economic advancement, within the broader context of the world economy, by taking into consideration the international affairs components which are inherently necessary.

The editing of a national Constitution is actually certainly not just an opportunity for petty negotiating of political ratings, nor one as well as to alter the equilibrium and distribution of powers in the State, yet mainly one of ground-up building reform to support a sustainably-accelerating economic growth. So as for this best target to become accomplished however, a number of essential measures must be actually taken.

Initially, the competitive advantage of the country has to be actually considered objectively. Just then can any one of the available tactic options be actually tested, in the strategic organizing stage. As the undertaking will possess enduring results, it is necessary to pre-establish a consequence approach, which ought to consist of components of efficiency targeting and also continuous monitoring, business continuity planning, along with durability safety mechanisms.

Eventually, through administering self-discipline as well as focus every step along the way, the advancement and effectiveness results come to be options which are readily available and also goals which are continuously obtained rather than harmful inconceivable outcomes. Due to the fact that it is actually a generally-known truth that stopping working to organize a plan essentially leads to setting the stage to fall short of the objectives that were set in the first place.

Throughout this short, yet detailed review, the experts which we have previously mentioned have shown that the advancement of the scholarly area of Law as well as Business economics is originated additionally way further back in time than was actually thought about. This reality only improves its validity as well as allows for a historical technique to become administered towards further discovering the methods with which it could help the evaluations of modern-day times. Its own current practical examples are actually numerous and our experts consider them to be essential in the procedure of rethinking the Romanian Constitutional framework. Especially as a result of the influence it currently applies in the worldwide field and due to the fact that the nationwide scholarly research reveals it appears open to importing its techniques, it is going to absolutely play an integral part in crafting the nationwide lawful institutions as well as developments of tomorrow. Given that the fact that the normative process is actually pre-systemic, we presented that no inhibitions would have an effect on administering the economic Review of Law principles in the method of determining future plan as well as legal structures. Additionally, we revealed that Romania remains in line along with the modern-day International visibility towards permitting this scholarly investigation field to flourish in the higher education sector. Romania is very much involved in this direction of thought, with the Bucharest Academy of Economic Studies having established a Legal Education Department, which again, represents an important acknowledgement of the crucial importance of this interdisciplinary field of study. As a result of these facts and advancements, the experts which we have previously mentioned strongly think that Regulatory analysis as well as Economics could positively affect the rules of our nation. And as the experts we have previously mentioned have demonstrated above, it should do this certainly not simply in the method of enacting them, yet additionally at the same time where judges consequently apply all of them, by making it

possible for the second to even more appropriately as well as legally integrate financial reasoning in the equity factors to consider that ought to accompany any type of sound courtroom choice.

In the present absence of a well-structured establishment for using economic thinking in the method of resolving lawful disagreements, it is actually not surprising that elements of Regulatory analysis as well as Business economics are being actually used although mostly accidentally by the Romanian judges. The Constitutional Court is actually not unsusceptible to this phenomenon in decisions including those regarding the nature of social care assistance in Romania, or fiscal accountability. The Court began to overreach its own specific Constitutional agenda through diving right into inquiries of policy, of regulatory chance. This behavior is actually mandated by an absence of detailed economic guidelines agreed-upon within the general overarching social deal. In the situation of a brand new Constitution, the jurisprudence of the German Federal Constitutional Court is extremely pertinent, in its conclusion that an equilibrium must be actually struck in between the flexibility of the legislature to regulate economic daily life and the constraints that the Constitutional Human rights impose on the former. Thus, it is clearly suggested that the selection of vital legal rights is going to unavoidably translate right into an option of potential activities and perspectives that will certainly be readily available in the situation of economically governing a nation. This thesis lays out to highlight these Constitutional stadium legal battles and their potential outcomes, therefore that the mire could be gotten rid of.

The subsequent analysis is one pertaining to judicial activism. Is the Romanian Constitutional Court supposed to decide based primarily on parameters of an economic nature? Will it legally be allowed to do so? We will proceed to study a series of controversial decisions of the Court in the area of fiscal accountability and social care support.

An array of Constitutional Court Decisions (Numbers 872, 873 and 874) was issued by the Romanian Constitutional Court on the 25th of June 2010 regarding conditionality-related austerity measures. Please see Romanian Constitutional Court Decision No. 872, No. 873 and No. 874 of the 25th of June 2010, the latter regarding the unconstitutional nature assessment

regarding the provisions of the Law imposing certain measures considered mandatory in order to reestablish the balance of the Budget, all of them published in The Official Journal of Romania No. 433 of the 28th of June 2010. These were Available online at the latest date of access of October 9th, 2019, but are no longer available in official English language translated form, but at the present time only in the Romanian language.

Ph.D. Thesis Summary Conclusion - The Final Transitioning

Oneness in the interpreting of the legislation by the courtrooms is actually a need that is acquired from the requirement for the promoting of the juridical security of all citizens. The last is actually, consequently, based on uniformity in the administering of the law, to which residents are actually entitled to. Obtaining uniformity in the interpreting of the regulation as well as uniformity in the using of it coupled with sound economic principles is actually a job that the Constitution is inevitably left to interpret rules with, as these are actually the absolute most strong resource of complete interpretation of lawful stipulations in Romania.

There is no concern that the Parliament has the lawful control to edict such interpretative regulations. This capacity originates from its duty, that of legislator, in the fulfilling of which it passes lawful rules, organic legislations and also normal rules, depending on the very interpretation of Article 73 first paragraph of the Constitution. However there is also no doubt that the Constitution determines, by means of the arrangements of its own Article 126, that the High Court of Cassation and also of Justice, as the supreme manager of Justice, is actually to "supply a complete analysis as well as implementation of the regulation through the various other law courts, according to its own proficiency", proficiency which is actually specified through regulation. Ultimately, the legal and also objective life as well as jurisprudential widespread identification of both the lawful principles of economy in connection with the legislation and also that of achieving economic development, and also the latter's "necessary for the courtrooms" attribute are actually self-evident too. Due to all the before-mentioned truths, we have concluded that it was actually needed to emphasize the simple fact that the legal ideas are

certainly not an oddity, however in fact stand for the step-by-step structure within which the High Courthouse of Cassation delivers its own lawful activity, by issuing interpretative legislations as properly as it can. Our research nicely details both the structure of our opinion, along with completely evaluating its sensible effects. Each of our declarations and also conclusions will remain authentic and also similarly relevant also in the occasion that the brand new Constitution will definitely enter into power, as they keep both the "compulsory for the judges" attribute of the economic principles in the interest of the rule, along with the capacity for their "immediate" entering into force. For more details on the current matter, as well as for regulatory context, please see Articles 499-502 of the Project of the new Code of Civil Procedure, as well as Articles 465-468 of the Project of the new Code of Criminal Procedure.

We began our analysis with a statement, and we feel that the time is here for us to re-state it, so that to not deem it forever lost in its nature. So indeed, due to all of the above-mentioned reasons, we strongly believe a strong case can be made for an emerging Economic Analysis of Law.

The conveniences used throughout our existing research study are actually threefold. Certainly not only we have revealed a brand new, structured, all-inclusive theoretical structure for puncturing the corporate shroud in any facet in which the problem might develop, yet through changing the beginning point of each situation study, it will certainly likewise permit a more affordable (given the matter at hand) subjective-oriented analysis as opposed to the unbiased item-by-item one presently in position. Last however certainly not of minimum importance, we have to display that by utilizing this approach, analyzing the issue before the court of judgement as a concern of lawfulness instead of one of mere economic fact is the appropriate solution to develop upon.

The nation's benefit of minimal responsibility conceptually always secures the citizens from having personal responsibility. (Zywicki, Adamson, 2009, p. 2) One concern that validly occurs is what circumstances, other than the publication of a company charter (in this case a Constitution), should be achieved prior to this minimal liability becoming realized by the rule of

law? There should certainly be requirements of allotting ample capital to the venture, should specific criteria be enforced regarding the premium quality (both sizable and also professional) of the financial documents of business, or are there actually various other solutions better, additionally or instead of?. Finally, if we were actually to explore much deeper into the issue, past these unbiased standards and on the subjective pattern of thought like the opportunity of regulating the incredibly particular method which organizations may carry out in a much less unsafe means in respect to others, the end result will be a creation of the necessity and also exorbitant activity of primarily creating a "Just how to conduct service correctly?" kind of manual/ rules, practically exceptionally inconceivable to ever become actually satisfactorily completed.

If the policy is actually adapted towards creating harder circumstances for business owners to possess accessibility to the protection of minimal liability, after that a significant concern that is produced positions as to where should the series be actually pulled? Between promoting the commencing of an organization as well as taking part in business tasks and also the correlative social requirement of greater security being granted to spectators as a "lawful guard" established to respond to the capacity of all of them being hurt, one may not go ideally or inappropriately, as the end result is actually dependant on the actions of the economic actors. Boosting buffers will translate right into discouraging commercial activity (through instantly generating obstacles to access), whereas less security will lead to incentivizing careless business making on the part of business owners, that, in making every effort to profit, would certainly lessen safety measure to the detriment of opening the gateway towards hurting third-persons (as they will inevitably certainly not shoulder individual responsibility for their activities).

Yet one may not but realize a various, a lot more practical course to solving the before-mentioned problem. This is actually why, in our viewpoint, up until (if ever will be the situation for it to take place) an entirely sufficient equilibrium within this sense may be hit, for the time being actually, we take into consideration the situation by situation study carried out by courts, by considering the completeness of elements as well as ultimately choosing whether the

company shroud should be actually punctured or certainly not as a really good compromise to state the least. As well as moreover, in accordance with our existing study's line of idea, we look at a misuse approach to the issue as at least deserving of additional consideration by courts, especially those of the Romanian jurisdiction.

Over the training program of this study, we showed that the idea of misuse possesses an edge to it that enables trans-jurisdictional targeting, as well as evaluated the specific instance of the Romanian - European Union relationship. Concluding that as a result of the fundamental elements required for the awareness, treatment and also additional growth of the concept existing in the Constitutional arrangements of both sovereign entities, it is quite not thus hard to think of one could possibly find resemblances elsewhere as effectively. And this particularly since the units undertaking comparisons are of different groups, the past a public regulation legal system while the second a blended one.

Making our approach break the typical rule doctrine of puncturing the corporate veil has actually allowed us to check out a certain element of the public legislation idea's use in the Constitutional body of rule. We have looked at the existing situation regulation and found that the judge-made groundwork is heterogeneous, made up of choice reviews and factors to become created upon a large quantity of variables. An abuse starting aspect would merge the duty of the court and decrease it to a procedure of figuring out whether one has actually abused his right of administering service under the economic liability protection-umbrella or otherwise, this having straight repercussion in the direction of the handling of the concern of *individual+State* somewhat other than merely taking the State's responsibility into account within any sort of presented situation.

Carrying on down the path started, we move the activity of the judge from one of first and foremost satisfying established requirements as well as just secondarily taking into account the totality of facts and economic principles towards that of placing a better focus as well as interest on whether the performance of any sort of one business owner is actually offensive or otherwise

in the certain situation (despite unbiased criteria-linked findings which may not eventually expose at all). This method, twin in attribute (relating to theory in addition to gifted with functional repercussions) would much better match situation by situation studies through instance evaluations that display such a fantastic aspect of particularity and exceptionality. Due to the fact that one needs to always remember that economically ineffective conduct is actually not illegal conduct by definition, but just through the method of judicial searching can it therefore become as such, as well as taking economic circumstances into consideration, thus overlooking the extremely correct approach towards integrating economic analysis within the field of legal analysis would be extremely wrong on so many levels.

Ultimately, and probably most importantly from the practical perspective, it appears easy for us to confidently state that the main consequence of an Economic Analysis of Law approach to the problem of redesigning the Romanian Constitution is that it creates the premise to have achieved efficiency by acting upon an issue of law rather than one of simple fact, and as such more properly supporting the theory and reasoning issued by the Romanian Constitutional Court within its cases, which set to enlighten a controversial, dark area. By means of this approach, in turn, we have hopefully succeeded to bring clarity to the issue and to settle it, because, as we have shown, under the reserve of context-driven exceptions, the present day Constitution of Romania could be deemed to constitute a sort of lawful, or post authoritarian form of constitutionalism. Given the fact that our thesis has concluded, and at some times implied, that there are a series of deficiencies which we have outlined within the ambit of the concept of constitutionalism as it currently applies in Romania, including lest not forget issues that have even amounted to require the European Union post-accession monitoring procedure, thus it can be safely stated that it very much has a long road towards evolution ahead.

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