FIDUCIA IN THE NEW CIVIL CODE: AN EXAMPLE OF VITALIZATION BY INTERNATIONAL BUSINESS LAW OF THE RELATIONSHIP BETWEEN ROMANIAN LAW AND *COMMON LAW*

Phd student **Luminita GHEORGHE**[1]

Abstract

Trusts have existed in common law systems as early as the Middle Ages, and European civil law systems were aware of its existence and also of the existence of Roman private law fiducia*. Yet, civil law systems resisted for a long time the temptation of transposing trust or at least of developing Roman law* fiducia*. Romanian law, for instance, preferred, on the one hand, developing a series of case law solutions acknowledging the common law trust and, on the other hand, admitting a series of trust-like mechanisms, while assuming the role of defender of private law principles considered fundamental, such as the personal character of the patrimony and the exclusive and perpetual character of the ownership right. Such* status quo *was maintained for a long time, with the consequence of generating a static relationship between trust and Romanian* fiducia*, with trustee mechanisms being, however, developed under Romanian law. Conversely, upon the regulation of Romanian* fiducia*, we tend to overlook its fundamental convergence with the common law trust. The evolution of Romanian law with respect to* trust *is however not the consequence of trust's proven utility; it is its forced answer to the dynamics of international business.*

Key words: *trusts, fiducia, Romanian Civil Code, common law, trust-like arrangements, comparative law.*

JEL Classification: *K11, K12, K33*

1. Preliminary considerations

The institution of trust, considered to be one of the most original contributions of the common law legal systems to the international legal puzzle, made its entry into Romanian law through the most traditional source of influence that the Romanian law has had over time: the French law. The regulation of Romanian *fiducia* started on 1 October 2011, being located in the Romanian New Civil Code (NCC), articles 773-791, Title IV of Chapter III, Assets. Therefore, the reception of trust occurred with the assistance of the French law, in a filtered way, and not following a direct confrontation of the Romanian legal tradition with the model of trust proposed by the common law systems. Moreover, by closely implementing the French legal model, the regulation of Romanian *fiducia* reflects the traditional doubts that continental European legal systems had with respect to trust, and more accurately the way in which such doubts were present in French law, including the doubt concerning the use of trust mechanisms generally for tax evasion purposes.

However, the regulation of Romanian *fiducia* by NCC has not come to life as a consequence of the existence of the abstract project of the Romanian lawmakers to provide the Romanian legal system with a new legal tool which would match to the multiples uses for which trust had already proven its utility. On the contrary, the legal regulation of Romanian *fiducia* by NCC was only perceived as a necessity following the development of international trade and businesses, which triggered the dynamics of certain legal tools to which the actors of international business were acquainted.

Indeed, under Romanian law trust-like mechanisms were available even prior to the express regulation of the Romanian *fiducia.* In this respect, Romanian law was sharply aware and had a thorough knowledge of both the Roman law *fiducia* and the trust mechanisms that the common law jurisdictions made available to their nationals. Also, further to the existence of international private law situations generated by citizens of common law jurisdictions (particularly real estate and inheritance related) and that had a connecting factor with the Romanian law, Romanian case law had to acknowledge the effects of trusts on Romanian territory prior to the Romanian law integrating the Romanian *fiducia* at normative level. Finally, Romanian law had disparate regulations in force for

[1] Luminița Gheorghe - Law Faculty, Bucharest University, Attorney-at-law, luminita.gheorghe@hotmail.com.

specific trustee activities and had also integrated various European pieces of legislation that contained express reference to trusts. Therefore, the presence of the *fiducia* under Romanian law may be noticed under various forms long before its normative acknowledgement under NCC. The development, under Romanian law, of specific mechanisms capable of regulating situations which under common law appear to be ideally dealt with by trusts dates and proves the parallel development by the common law jurisdictions and the Romanian law, as a *civil law* system, of legal mechanisms that answer the same practical needs, while maintaining their autonomy and appearing to find the manner to reciprocally but distantly admit the solutions proposed by each of them. Considering the long duration of these local developments, one may admit the existence of a static relationship between the common law and Romanian law legal systems from the perspective of trusts (*I – The static relationship between Romanian law and common law systems in relation to trusts*).

Once we acknowledge the existence of a static relationship between common law and Romanian law jurisdictions from the perspective of trusts, arguments will be brought forward with regard to the fact that the current regulation of the Romanian *fiducia* has become necessary only after the increasing internationalization of legal situations, such phenomenon following closely and naturally the increasing international trade and generally international business. Romanian *fiducia* as regulated under NCC was therefore the mandatory answer of the Romanian legal system to the requirements of the Romanian and international business environment. It was not the desire to improve the Romanian legal system that led to the conclusion of the necessity of the regulation of *fiducia*, but the acknowledgement of the necessity of normative mechanisms more powerful than the mere respectful but distant recognition of trusts, without the existence of an effective communication between the two systems which appeared to function perfectly independent, even in those situations where their communication in the field of trusts seamed necessary. A deeper communication was welcomed only at the time of the enactment of the new fundamental piece of private law legislation – the new civil code. And if NCC regulated the *fiducia* under the influence of *common law* trusts and not by reshaping the Roman law *fiducia* or by merely coordinating the already existing but deeply topical pieces of legislation, the first question mark appearing after acknowledging the source of inspiration of the Romanian lawmakers concerns the intensity of such influence.

And if communication has finally began between the common law and the Romanian legal systems with respect to trusts, how deep is such communication? In other words, to what extent was the previously stable and deeply-grounded relationship between the two legal systems affected by the international business environment: is Romanian law *fiducia* rather convergent with or divergent from the common law trust? The punctual analysis of the elements of convergence and divergence between Romanian law *fiducia* and trust shall additionally provide valuable information for the business environment: Romanian law *fiducia* appears to have been put in place essentially for its use in business, such use representing the most recent use of trusts under common law legal systems. From a legal perspective, this aspect is at first sight surprising, but in fact it is essentially reassuring because the use of the Romanian *fiducia* as a business tool, and not in traditional fields such as inheritance law, represents an elimination of the previous phases of the use of trusts, together with all the specificity which such uses gave to them. This is because trusts are intimately related to the history and specific context of the common law system, while aspects such as the exclusivity and perpetual character of the ownership right represented traditional conceptual barriers to the reception of trusts. All such aspects will be closely dealt with under section two (*II. The vitalization of the relationship between Romanian law and common law systems in relation to trusts*).

2. The static relationship between Romanian law and common law systems in relation to trusts

The *fiducia* was not completely unknown in Romanian law, as it had existed, on several levels, even prior to the NCC. There was a good knowledge, as far as the legal doctrine is concerned, of how Roman private law *fiducia* and common law trust operated. Also, Romanian courts were beginning

to acknowledge the effects of trusts created in international contexts and the *fiducia* partially started being regulated by the law.

2.1. Awareness of legal doctrine

Under Roman law, *fiducia* was one of the first forms of security which could be created by debtors. It did, however, have several inconveniences[2], since it involved transferring ownership over the asset to the creditor, which was to return it to the debtor provided same fulfilled its obligation. Until ownership was returned, ownership transfer to the creditor involved a series of inconveniences: transferring the possession to the asset, the fact that the debtor could not create a new security on the same asset or the debtor's competition with all its creditor's creditors if the former became insolvent. All these drawbacks were resolved by subsequent forms of security - the pledge allowed only the transfer of possession, and the mortgage did not involve transferring possession to the pledgee, but only its right to take possession of the relevant asset and sell it in order to enforce its receivable[3]. The French doctrine, too, is perfectly familiarized with the institution of the Roman private law *fiducia*, which was generally the starting point of the debate on the trust proposed by the common law systems[4]. The Romanian doctrine took an interest in the institution of trust before the NCC was adopted[5], and business law practice in Romania's market economy has put practitioners in direct contact with trust-specific tools, even if they remained governed by foreign laws.

Nevertheless, Roman private law fiducia was never continued by the Romanian law or generally by the European continental legal systems. Moreover, the role of the *fiducia* in asset management, as it is now present in common law systems, was generally opposed by the idea of the exclusivity of the ownership right. However, at the time of its enshrinement, particularly in the 1804 Napoleon Code, exclusivity was a conceptual evolution which followed the division of ownership in the Middle Ages and which had as effect that the integration of notions potentially affecting these evolutions was long regarded with reservations by the majority of the European continental law systems. This has led French professor Aynès to claim that the fiducia is likely to lead to the abolition of an important notion for civil life, namely that of ownership[6].

2.2. Recognition by Romanian case law

Romanian courts of law were compelled to recognize the effects of trust agreements in Romania long before the adoption of the NCC[7] and thus independently of the theoretical issue of the existence of an institution in the Romanian law which is analogous to the institution of trust. It should be noted here that the first cases dealt with the civil law of inheritance, which thus coincided with one of the classical uses of trust, that of management and devolution of inheritance. Hence, the international aspect of trade and the international business law did not play an essential role at that time; it was the international context of the Romanian nationals that was critical. Other legal systems continuing the civil law tradition, such as those of Quebec, Louisiana or South Africa, had to create, initially, the necessary framework for the reception of inheritance trusts instituted by their citizens originating from the United Kingdom[8]. Hence, inheritance law was, in some legal systems, the first element that drove the reception of trust. Obviously, the strict regulation of *inter vivos* gifts and of the freedom of disposal under the inheritance law in European civil law systems did not have the same evolution, but determined a reception of trust especially in the context of business law. It is

---

[2] Emil Molcut, *Drept roman*, Edit Press Mihaela S.R.L., Bucharest, 2002, pp. 218-220

[3] André Gouron, *Revue historique de droit français et étranger*, Paris, 1961, p. 19, apud Emil Molcut, op. cit., p. 221

[4] François Barriere, *La fiducie française ou le réveil chaotique d'une „belle au bois dormant"*, 58:3 McGill Law Journal, 847, pp 849; Blandine Mallet-Bricout, *Fiducie et propriété*, *Liber amicorum Christian Larroumet*, Sarah Bros and Blandine Mallet-Bricout, Economica, Paris, 2010, p. 298

[5] Rodica Constantinovici, *„Equity" si „Trust"*, „Dreptul", 1/2004

[6] Laurent Aynès, *L'introduction de la fiducie en droit français*, „Revue Lamy Droit Civil", 2009, p. 63

[7] Supreme Tribunalul, civil decision 1909/1973, Decisions Collection dated 1973, p. 114 *et seq*., in Rodica Constantinovici, *op. cit*, p. 206

[8] Madeleine Cantin Cumyn, *Réflexions autour de la diversité des modes de réception ou d'adaptation du trust dans les pays de droit civil*, 58:4 „McGill Law Journal", 811, pp 815-817

interesting to note in this context the fact that the trustee mechanism did not, however, remain completely unknown to the Romanian inheritance law, as NCC is currently regulating *substitutia fideicomisara* (*fideicommissum*), which relies on a trustee mechanism.

Reverting to the manner in which the Romanian courts of law handle trust mechanisms, in an actual case[9] it was expressly established that trust agreements do not constitute wills under Romanian law, but non-regulated contracts, the effects of which, however, are recognized in the Romanian law "since such deeds were validly instituted in the country of origin of its settlor, and can be recognized in our country, where its effects are to be produced, provided that they do not breach any public order regulations of private international law"[10]. The position of the court perfectly illustrates the relationship which had existed, before the adoption of the NCC, between the Romanian law and the common law in relation to trust: allowing it to take effect in Romania, provided public order regulations of private international law are observed. Despite the fact that this is a legally correct and comprehensive approach, the court's wording shows that there are in fact two perfectly separated legal systems at work, which are not communicating with each other, which cannot influence each other or accept any flexibility in their position as a matter of principle.

2.3. A fragmentary legislative presence

Before the adoption of the NCC, attorneys could conduct trustee activities, under their professional statute[11]. These activities are similar to the trust mechanism, allowing attorneys to carry out, under legal services agreements, activities such as "receiving funds and assets in custody, in the name and on behalf of their clients, funds and assets obtained from the sale or enforcement of enforceable instruments, after the completion of an inheritance or liquidation proceeding, as well as their placement or sale, in the name and on behalf of their clients, activities related to the management of the funds or securities in which they were placed". It is worth noting the central element of an attorney's activities related to the management of certain funds or securities, namely conducting the aforementioned various trustee activities in the name and on behalf of its client, which distinguishes it from trust.

Various Romanian private law mechanisms were considered non-regulated *fiducia*, taking into account their fundamental functioning principles. The doctrine has often referred to sale and buy-back option, *stipulatio alteri* (third-party beneficiary contracts), retention of title sale or purchase of securities in investment funds[12]. Despite the fact that some of these examples may actually be considered inconclusive, one cannot deny that they have been constructed based on a trust-like mechanism. However, financial and banking practices involving temporary or conditional assignments of various rights, for security purposes, are probably one of the most appropriate examples.

In the end, it is worth noting, in this context, the references to the institution of trust contained in various European law directives or regulations[13]. Since they are part of the Romanian domestic law, they are compelling it to connect to the concept of trust, even outside the scope of an express regulation under the strict framework of the Romanian private law. Some European law financial and banking directives also allow for the creation of certain mechanisms which are very similar to trust[14].

Considering the above, one may claim that, despite the fact that it was not a completely foreign notion, common law trust was viewed not related to the various forms of *fiducia* mentioned above,

---

[9] Supreme Tribunal, composed as set out under article 39 para 2 and 3 in Law no. 58/1968, decision no. 7/1974, Decisions Collection dated 1974, p. 99 *et seq.*, in Rodica Constantinovici, op. cit, p. 206

[10] *Indreptar interdisciplinar de practica judiciara*, Savelly Zilberstein, Didactic and Pedagogical Publishing House, Bucharest, 1983, available on 16 November 2014 at: http://legeaz.net/forum/jurisprudenta-spete-hotarari-judecatoresti/375-indreptar-interdisciplinar-de-practica-judiciara-1983

[11] Law no. 51/1995 on attorneys' statute, article 3, para. 1, letter g

[12] Ioan Popa, *Contractul de fiducie reglementat de Noul Cod Civil*, RRDP, no. 2/2011, p. 214

[13] For instance, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing or Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[14] Directive 2002/47 on Financial Collateral Arrangements.

such forms relying only partially on common law trust as a generating factor. In fact, the above forms are but a fragmentary and inconsistent presence, since there is, generally, no intention of communicating with common law trust, which is also illustrated by the fact that Romania has not ratified the Hague Convention on trusts, which has however so far been adhered by only a small number of countries[15]. This *status quo*, however, could not be maintained mainly due to the ever more significant presence of international trade and private international law elements, and thus the need for a real communication between Romanian law and common law systems, including in the rather specific field of trusts. The time of the NCC adoption appears to have been the most appropriate time for the beginning of a dynamic relation between common law trust and Romanian *fiducia,* this time as a positive law solution.

3. The vitalization of the relationship between Romanian law and common law systems in relation to trusts

The juxtaposition of the concepts - Romanian law *fiducia* and common law trust - does not entirely reflect the Romanian lawmakers' source of inspiration. Contrary to expectations that the legal institution of trust would have been the subject of many studies prior to the adoption of the NCC, the lawmakers have proved to be practical in drawing their inspiration from the French law, which adopted the *fiducia* as late as 2007[16]. However, considering that the common law trust was the primary source of inspiration for the French law, we will touch upon the essential elements of the relationship between Romanian *fiducia* and common law trusts. Therefore, diverging and converging elements are to be analyzed successively, in an attempt to evaluate the extent to which the NCC rendered the static relationship between the fiducia and trust more permeable. Is Romanian law *fiducia* convergent to or divergent from trust?

3.1. Dissimilarities between the Romanian law *fiducia* and the common-law *trust*

Over time, the trust in the common law system (we mainly refer to the English law system) has acquired a series of characteristics and particularly a wider and more diversified application. In addition, the development of the notion of trust is closely linked to the equity component of the common law system, as the need to protect the trust beneficiary's interests and the proceedings applied in case of the trustee's failure to meet its obligations are recognised as the fundamental elements leading to the establishment of equity courts. Subsequently, the trust became in its turn one of equity's main contributions to the development of the common law system, besides many other contributions, amongst which certain specific remedies (specific performance, injunctions etc.), which are granted nowadays only within the *equity* system.

The above elements have led to a marked distinctiveness of the trust as well as to a very comprehensive scope of application thereof. It is precisely this very diversified and formalism-free characteristic of the trust in the common law systems that differentiates it from the trust adopted by the civil law systems. We will refer below to the main differences between the common law trust and the Romanian law *fiducia*, in terms of their respective scope of application.

In accordance with the Romanian law, the persons capable of acting as trustees are solely credit institutions, investment and investment management companies, financial investment services companies, insurance and re-insurance companies, and public notaries and lawyers. On the other hand, in the common law systems any person may, without restriction, act as trustee. Private individuals were the first trustees, as the personal relationship of trust between the settlor and the trustee was the main generator of the mechanism. This very wide scope of trustees has not been maintained in the Romanian law (nor in several other civil law systems), mainly to avoid, according to the lawmakers' express mentions, the use of *fiducia* in money laundering and tax evasion

[15] Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, International private law Hague Convention, 1 July 1985, available on 20 November 2014 at http://www.hcch.net/index_en.php?act=conventions.text&cid=59, ratified by 12 states only

[16] Law 2007/211 as of 19 February 2007, modified numerous times after adoption

operations. We point out that the French lawmakers took an even more restrictive approach to *fiducia*, restricting settlors, for a short period of time, to income tax corporate payers, but shortly abandoned this approach due to fierce opposition.

The Romanian *fiducia* cannot be used to make an indirect donation to the beneficiary, or else it is deemed null and void (although this sanction is rarely used in the NCC system). On the contrary, this is one of the reasons why the institution of trust is used within the common law systems. The same sanction is applied if the Romanian *fiducia* does not meet the requirement of being made in notarised form, or if the trust agreement does not expressly include certain clauses, such as the duration, purpose or scope of the management and disposal powers of the trustee. We also note that the *fiducia* must be expressly instituted, by virtue of law or by the parties' will, unlike in the common law systems, where the trust may be established by a judge, by means of constructive trust and resulting trust (so an *a posteriori* establishment of the trust). Last, all these elements indicate the formalism of the *fiducia*, which is also subject to the publicity systems organised with respect to the assets placed under the *fiducia*. The strict application of *fiducia* mainly reflects the lawmakers' fears of a possible use of *fiducia* for illicit purposes. However, there is an aspect which should not be neglected: the limitations of *fiducia* are also based on European continental law arguments, which traditionally explained their resistance to the reception of the trust.

Regarding the latter, the capacity of the trustee as (at most) a *sui generis* owner is probably the main element that differentiates between the *fiducia* and the trust. While the trust recognises two owners in its operating mechanism (one by virtue of law, according to the common law system, that is the trustee, and one according to the *equity* system, that is the beneficiary), the Romanian *fiducia* faces a double difficulty: to recognise the trustee as the real owner and the beneficiary as owner from an economic perspective. This view clearly crystallises in NCC's ambiguous wording, NCC stating that the trustee acts "as a real owner" only in the relations with third parties and only to the extent that they are not aware of the "limitation of its powers" (without clarifying whether the publicity requirement of *fiducia* may actually constitute a general argument that third parties should know the trustee's power limits). Thus, the trustee is an owner by virtue of its purpose, with limited powers under the *fiducia* instrument, and generally accountable to the settlor (and not the beneficiary) of the *fiducia*. We note that, unlike the trust, the *fiducia* does not break the link between the settlor and the trustee, and that this *nexus* is maintained during the entire duration of the *fiducia* and leads inclusively to the trustee's obligation to compensate the settlor to the extent that the latter is harmed by the trustee's act of not disclosing its capacity to third parties, provided that it is bound to do so under the *fiducia* contract. In the common law system, it is only the beneficiary or the protector that may generally require the trustee to account for the manner in which it meets its obligations under the trust instrument, and liability is generally towards the beneficiary, pursuant to the *equity* rules (and not the common law rules which are specific only to the settlor-trustee relationship).

3.2. Similarities between *fiducia* and trust

The list of similarities between *fiducia* and trust is certainly shorter than the dissimilarities, but no easier to draft and certainly very debatable. Although the dissimilarities are more conspicuous, the similarities should not be disregarded either. The similarities are, if not as numerous for the time being, at least as important, due to their basic significance which is raising awareness on the trust mechanism by virtue of substantial Romanian law rules, and not by its mere recognition thereof, based on international private law. Moreover, the substantial Romanian law rules applicable to Romanian *fiducia* may complete in the future the legal status of a trust, and also offer an immediate support to courts and civil circuit participants when confronted with the common law trust. Last but not least, the current status of the Romanian *fiducia* constitutes a potential basis for its future development, if the mechanism offered by the NCC proves to be useful.

Concerning specific elements of similarity, we believe that the foundations of the trust mechanism are also to be found in the Romanian law *fiducia*. In the case of Romanian *fiducia* we are fundamentally in the presence of a tripartite mechanism in which the settlor transfers certain

economic rights to a trustee, who exercises them for a determined purpose for the benefit of a beneficiary.

In order for this basic scheme to be consistent with the Romanian legal system, and to enable a trustee to actually "exercise" the transferred rights (and not only to "manage" them, as a first draft version of NCC used to set forth), a series of concept arrangements have been made (beyond the more abstract discussions about the precise legal qualification of the capacity in which the trustee exercises these rights or the issue of knowing whether they are truly legal rights or just powers).

First of all, the notion of "patrimony" (*masa patrimoniala*) was expressly recognised for the first time in the positive Romanian law. A transitional legal notion has therefore been introduced, which does not directly affect the personal character of the patrimony, but allows for the administration by a single person of distinct patrimonies. We take the view that this legal construction contains the elements necessary to validly raise the issue of the unbreakable relation traditionally assumed to exist between the patrimony holder and the patrimony itself, due to the fact that the trust patrimony exists independently from its holder, and that it may be transferred, for example, from the settlor to the trustee and then from the trustee to the beneficiary, while maintaining the quasi-autonomy from the trustee's and then the beneficiary's patrimony, because for instance it cannot be merged with the beneficiary's patrimony unless all liabilities are paid.

Second, both the construction of the *fiducia*, and certain general indicators in the NCC (for example, the one mentioned above regarding the situation where the trustee acts as "the sole right holder" towards third parties, while, *per a contrario*, not being, amongst the *fiducia* parties, "the sole owner"), show that the discussion of double ownership by both the trustee and the beneficiary at the same time, to copy the common law model, cannot be *de plano* removed, although this would be completely inconsistent with the classic view of the exclusive and absolute nature of ownership. Hence, the issue has been raised by Romanian commentators whether the *fiducia* could allow for the judicial ownership and economic ownership to exist [17] at the same time and in relation to the same rights. Currently one can notice that the Romanian doctrine is at a stage where it minimizes and denies the theoretic consequences that the introduction of *fiducia* may have, which is presently qualified succinctly as a new method of dividing and managing the patrimony[18].

The discussions raised by the precise legal qualification of *fiducia* and the theoretic bases thereof do not prevent recognition of the constituent elements thereof and their similarity with the trust. Although the trust is not defined in the common law systems, its constituent elements are however detectable in a series of works and codes. If we refer, for example, to the Hague Convention on the trust and the elements it considers, in Article 3, to be specific to the trust, we can easily conclude that they are found in the Romanian law *fiducia*, as the NCC has prepared the ground for an actual embrace of the trust. Hence, the assets in trust represent a separate patrimony from that of the trustee, who is the holder of the rights over the assets in trust and at the same time has the legal power and the obligation to account for the manner in which it exercises its rights over the trust patrimony. Last, this international codification expressly mentions that the reservation of certain rights by the settlor of the trust is not necessarily incompatible with the existence of the trust. This mention is essential for the Romanian *fiducia* and allows for the existence and operation thereof beyond the theoretic debate on the precise legal nature of the right granted to the trustee by the settlor. At the same time it confirms that the dissimilarities may be reasonably considered outweighed by the similarities between the trust specific to the common law and the *fiducia* regulated by the NCC.

---

[17]In this respect, see Ioan Popa, *Noul Cod Civil – comentarii, doctrina, jurisprudenta* (The new Civil Code - comments, doctrine, case law), collective author, Hamangiu, Bucharest, 2012, p. 773, who admits that in foreign regulations similar to those set forth in the NCC, such as the Luxembourg legislation, the distinction between "economic owner" and "legal owner" is accepted, and is relevant from a fiscal perspective. On the other hand, see Rodica Constantinovici, *Noul Cod Civil. Comentariu pe articole, (The New Civil Code. Comments on an article-by-article basis)* coordinated by Flavius Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, C.H. Beck, Bucharest, 2012, p. 822, who states that the existence of double ownership over assets held under trust is specific to the common law system, but was not taken as such by the civil law systems, which "introduced a similar institution – fiducia –, which contains adequate changes, to be made compatible with national systems".

[18] Valeriu Stoica, *Drept Civil. Drepturi reale principale* (Civil Law. Main real rights), C.H. Beck, Bucharest, 2013, p. XIV

4. Conclusions

Considering the long static relationship between the Romanian law and the common law systems in the matter of trust and also the position taken by the Romanian lawmakers in instituting the *fiducia* under the NCC, one may reasonably conclude that it was not the Romanian lawmakers' intention to provide a holistic or perfectly comprehensive approach to *fiducia* in the NCC. Instead, the Romanian law responded to the practical needs signalled by local and international business. The dynamic legal relationship between the Romanian law and the traditional common law systems on the matter of *fiducia* was generated first of all by the dynamism of the international business world. The international trade in economic values has generated an international trade in legal institutions.

Bibliography

1. Blandine Mallet-Bricout, *Fiducie et propriété*, Liber amicorum Christian Larroumet, Sarah Bros and Blandine Mallet-Bricout, Economica, Paris, 2010
2. François Barriere, *La fiducie française ou le réveil chaotique d'une „belle au bois dormant"*, 58:3 McGill Law Journal, 847
3. Ioan Popa, *Contractul de fiducie reglementat de Noul Cod Civil*, RRDP, 2/2011
4. Madeleine Cantin Cumyn, *Réflexions autour de la diversité des modes de réception ou d'adaptation du trust dans les pays de droit civil*, 58:4 McGill Law Journal, 811
5. Flavius Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.), *Noul Cod Civil. Comentariu pe articole*, C.H. Beck, Bucharest, 2012
6. *Noul Cod Civil – comentarii, doctrina, jurisprudenta*, collective authors, Hamangiu, Bucharest, 2012
7. Rodica Constantinovici, *„Equity" si „Trust"*, Dreptul, 1/2004
8. Yaëll Emerich, „*Les fondements conceptuels de la fiducie francaise face au trust de la common law: entre droit des contrats et droit des biens*", 1 RIDC 49, 2009
9. Valeriu Stoica, *Drept Civil. Drepturi reale principale*, C.H. Beck, Bucharest, 2013.