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# The Theory of Abuse of Right in Interwar Romanian Legal Doctrine: The Contributions of Mircea Djuvara and Matei Cantacuzino

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**Abstract**: *This study analyzes, through a historical-comparative method, the contributions of two prominent jurists of the Romanian interwar period – Mircea Djuvara and Matei Cantacuzino – to the development of the theory of abuse of right in national legal doctrine. Starting from the European context of the formation of this theory and from the silence of the Civil Code of 1864 on the matter, the article examines the conceptions of both authors through an analysis of their fundamental works and their reception in interwar jurisprudence, highlighting both the convergences and the specificity of each approach. While Djuvara grounds the theory of the relativity of rights on philosophical-legal principles of Kantian inspiration, proposing an objective conception based on the social finality of rights, Cantacuzino adopts a technical-legal perspective, centered on the subjective criterion of intent to harm and the interferences with civil delictual liability. The study demonstrates the contemporary relevance and actuality of the interwar contributions by reference to the regulation of abuse of right in Article 15 of the new Civil Code, while simultaneously offering a comparative analysis with developments in European legal systems (French, German, Swiss) and the jurisprudential applications of this theory in Romanian judicial practice.*

**Keywords:** *abuse of right, interwar legal doctrine, Mircea Djuvara, Matei Cantacuzino, subjective right, good faith, relativity of rights; finalist theory.*

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## Introduction

The theory of abuse of right constitutes one of the most important doctrinal constructions of modern legal thought, reflecting the tensions between the individualistic conception of subjective rights and the imperatives of social solidarity. Born from the necessity to temper the rigor of the principle *qui iure suo utitur neminem laedit*, this theory has evolved from the first French jurisprudential applications to explicit legislative consecration in contemporary civil codifications.

In Romanian legal space, the problematic of abuse of right aroused considerable doctrinal interest as early as the interwar period, despite the silence of the Civil Code of 1864. In this context, doctrine was called upon to supplement the legislative lacuna, elaborating theoretical constructions adapted to the specificity of our civil law.

Among the authors who marked the configuration of the theory of abuse of right in Romanian doctrine, two figures of first rank stand out: Mircea Djuvara and Matei Cantacuzino. The first, situated in the tradition of philosophy of law, founded the theory of the relativity of rights and their intrinsic limits, derived from their social finality. The second analyzed abuse of right through the prism of the subjective criterion of intent to harm, emphasizing the interferences with civil delictual liability.

The present study proposes to analyze comparatively the contributions of both jurists, highlighting the convergences and specificity of each conception, as well as the manner in which these have influenced the theoretical development and practical application of the institution of abuse of right. The endeavor is motivated by the conviction that the work of these authors retains a remarkable actuality for understanding the contemporary regulation of abuse of right in Article 15 of the new Civil Code. The adopted methodology combines the analysis of the fundamental texts of both authors with the examination of the manner of reception of their theories in interwar jurisprudence and in subsequent doctrine, thus offering an integrative perspective on the conceptual and applicative evolution of the theory of abuse of right in Romanian legal space.

## The context of formation of the theory of abuse of right in the interwar period

### *The jurisprudential and doctrinal origins of the theory of abuse of right in european space*

The theory of abuse of right has its origins in French jurisprudence from the second half of the 19th century, being the result of praetorian solutions meant to correct the inequitable consequences of the exercise of subjective rights. The famous judgment pronounced by the Court of Appeal of Colmar on May 2, 1855 in the arrêt Doerr case, concerning the construction of a false chimney with the sole purpose of depriving the neighbor of light, is unanimously considered the birth certificate of the theory of abuse of right (Josserand, 2006). The Court stated in its reasoning that "c'est méchamment que l'appelant, sans utilité pour lui et dans l'unique but de nuire à son voisin, a élevé, en face et presque contre la fenêtre de l'intimé [...] une fausse cheminée" (it is with malice that the appellant, without utility for himself and with the sole purpose of harming his neighbor, erected, facing and almost against the window of the respondent [...] a false chimney).

This jurisprudential solution opened the way for ample doctrinal debates regarding the limits of the exercise of subjective rights and the foundation of sanctioning abusive conduct. A subsequent reference moment is constituted by the famous Clément-Bayard case of August 3, 1915, in which the French Court of Cassation refined the theory of abuse of right through the distinction between elements that effectively prejudice another (iron tiles raised to destroy aircraft) and those that do not cause damage (wooden carcasses). This decision consolidated the idea that the exercise of right must not have as its exclusive purpose the harming of another.

Louis Josserand (1868-1941), dean of the Faculty of Law of Lyon, systematized the theory of abuse of right in his fundamental work "De l'esprit des droits et de leur relativité" (1927), arguing that subjective rights are relative and have a determined social finality (esprit du droit). In his finalist conception, the abusive act is that contrary to the purpose of the institution, its spirit and finality (Josserand, 2006). Josserand distinguishes between three criteria of abuse: (1) exercise of right without legitimate interest or with minimal interest; (2) exercise contrary to the economic or social destination of the right; (3) exercise with intent to harm. This finalist or teleological theory exercised considerable influence on continental European legal thought, being received and adapted in different national doctrinal spaces, including in German law (§ 226 BGB) and Swiss law (art. 2 CC).

In comparative doctrine, three main approaches to abuse of right have crystallized: the classic theory which emphasizes maliciousness (animus nocendi), the "objective" theory which requires a great inequality between the benefit derived from the exercise of the right and the detriment that results for another (based on the criterion of social finality) and the socialist theory. It must be specified that Josserand's theory, although often qualified as "objective," retains subjective elements through reference to the spirit and finality of the right, which situates it in an intermediate position (Mayrand, 1974).

*The European context of codifications.* For understanding the evolution of abuse of right, reference to the principal European codifications that consecrated this theory is relevant. The German Civil Code (BGB) provided in art. 226 that "Die Ausübung eines Rechts ist unzulässig, wenn sie nur den Zweck haben kann, einem anderen Schaden zuzufügen" (The exercise of a right is inadmissible when it can have as sole purpose the causing of prejudice to another). The Swiss Civil Code consecrates the principle in art. 2: "Der offenbare Missbrauch eines Rechtes findet keinen Rechtsschutz" (The manifest abuse of a right finds no legal protection). These legislative formulations demonstrate that at the beginning of the 20th century the theory of abuse of right had gained wide recognition in continental Europe.

### *The Romanian Legislative Framework: the silence of the Civil Code of 1864 and the creative role of Jurisprudence*

In Romanian law, the Civil Code of 1864, inspired by the Napoleonic model, did not include any express provision regarding abuse of right, thus following the individualistic conception specific to the Napoleonic Code which conferred on subjective rights an almost absolute character. This silence of the legislator did not however prevent jurisprudence and doctrine from recognizing the existence of limits in the exercise of subjective rights. Alexandresco (1906), in his monumental work "Theoretical and Practical Explanation of Romanian Civil Law", remarks that, although the law did not explicitly regulate abuse of right, the general principles of civil delictual liability (art. 998-999 Civil Code 1864) offered a sufficient basis for sanctioning the malicious exercise of rights. Alexandresco argues that "the exercise of right can become illicit when it is inspired by the exclusive intention to harm another," a position which prefigured the subsequent doctrinal reception of the theory (Deleanu, 1988).

Romanian courts applied the theory of abuse of right in numerous cases, consecrating by praetorian means an institution which the legislator had omitted to regulate. Interwar jurisprudence offers significant examples:

in the matter of property right, tribunals sanctioned constructions made with the sole purpose of depriving the neighbor of view or light (analogous to the French Doerr case); in the matter of contractual relations, abusive terminations of labor or lease contracts were sanctioned; in the domain of procedural rights, actions brought in bad faith were counteracted. This judicial practice was systematically documented by interwar doctrine, which extracted from court decisions the general principles of the theory. Only with the entry into force of the new Civil Code (October 1, 2011) did abuse of right receive explicit legislative consecration, art. 15 establishing that no right may be exercised for the purpose of harming or damaging another or in an excessive and unreasonable manner, contrary to good faith (Law no. 287/2009, art. 15). This regulation represents a synthesis of doctrinal and jurisprudential evolution of over a century.

*Delimitation from the theory of abnormal neighborhood disturbances.* An important distinction that Romanian jurisprudence had to operate is that between abuse of right and the theory of abnormal neighborhood disturbances (troubles anormaux de voisinage). Today, in cases of conflicts between neighbors, jurisprudence relies more frequently on the theory of abnormal neighborhood disturbances, which is easier to apply because it is sufficient to demonstrate that the disturbance is objectively "abnormal" without being necessary to prove a malicious intent. This theory was recently codified in France by Law no. 2024-346 of April 15, 2024 (Legifrance, 2024), which introduced art. 1253 in the French Civil Code, demonstrating the continuous evolution of the matter.

## *The premises of reception of the theory of abuse of right in romanian doctrine*

Romanian interwar legal doctrine was formed under the decisive influence of French legal thought, numerous Romanian jurists completing their studies in Paris. This openness toward the European academic space facilitated the rapid reception of theories regarding abuse of right, which were however adapted to the particularities of our legal system (Boilă, 2011).

The first systematic analyses of abuse of right in national legal literature belong to Dimitrie Alexandresco, whose considerations constituted the starting point for subsequent elaborations. On this doctrinal foundation, interwar jurists developed original theoretical constructions, among which the contributions of Mircea Djuvara and Matei Cantacuzino stand out through depth and coherence, whose analysis we will undertake in the following chapters.

## Mircea Djuvara's conception of abuse of right

### *Intellectual formation and philosophical-legal foundations of Djuvara's thought*

Mircea Djuvara (1886-1944) represents one of the most prominent figures of Romanian legal thought from the first half of the 20th century. Trained at the Faculty of Law and at the Faculty of Letters and Philosophy in Bucharest, he completed his academic preparation at the Sorbonne, where he obtained his doctorate in law with the thesis Le fondement du phénomène juridique (Djuvara, 1913), a work in which he laid the foundations of a general theory of law based on Kantian rationalist principles. He taught at the Faculty of Law in Bucharest starting in 1919, occupying the chair of Legal Encyclopedia and Philosophy of Law until his dismissal in 1940, on racial criteria, in the context of the anti-Semitic legislation of the Antonescu regime. His vast work, comprising over 144 titles, reflects a profoundly philosophical approach to the legal phenomenon, inscribing itself in the tradition of Kantian-inspired rationalism and representing an original synthesis between Western legal thought and the specificity of Romanian legal culture.

His fundamental work, General Theory of Law, published in three volumes at Socec Publishing House in 1930, constitutes a monumental synthesis of his legal thinking (Djuvara, 1930). In this work, Djuvara proposes to identify what is common to all branches of law, in any time and in any place, bringing to light the reality of law as such, regardless of its varied manifestations.

### *The theory of subjective rights and their intrinsic limits*

In Djuvara's conception, the subjective right cannot be defined exclusively through the theory of will or through the theory of interest, but through a rational synthesis of these. The Bucharest professor emphasized that not any psychological will constitutes the characteristic element of the legal phenomenon, but only an ideal will, filtered through the understanding of an ideal of justice (Djuvara, 1930). Similarly, not any interest can generate a subjective right, but only those interests which the law has transformed into legitimate interests and legally protected.

Starting from this foundation, Djuvara argues that subjective rights are not absolute prerogatives, but legal realities which are justified only insofar as they serve the realization of the ideal of justice. The ultimate purpose of positive law can only be the realization, in social life, to the most extensive measure possible, of the idea of justice (Djuvara, 1930).

### *Abuse of right as diversion of right from its social finality*

From Djuvara's perspective, abuse of right appears when the holder exercises his legal prerogative in a manner contrary to the finality for which it was recognized by the legal order. This conception approaches Josserand's finalist theory, but Djuvara grounds it on his own rationalist principles, derived from Kantian philosophy. Unlike Josserand, who emphasizes the concrete spirit of each legal institution (esprit de chaque droit), Djuvara constructs a general theory based on the rational ideal of justice as the ultimate foundation of legal order. In his vision, the right of property, for example, is not recognized to allow the holder to prejudice others without any advantage of his own, but to ensure him the use and fruition of goods in a useful and reasonable manner.

For Djuvara, subjective right exists only where it is recognized by law, and the law itself must have as its purpose the accomplishment of justice. Therefore, the exercise of a right in contradiction with this fundamental purpose constitutes a negation of the right itself and attracts the sanction of the legal order.

### *Criticism of legal absolutism and the thesis of relativity of rights*

Djuvara firmly rejects the absolutist conception of subjective rights, according to which the holder could exercise his right without any limit. In his vision, objective law has the mission to realize a coexistence of subjective rights, limiting the freedom of each to the extent necessary to ensure the freedom of all. This thesis of the relativity of rights implies that no right can be exercised in a manner that contravenes its social and rational purpose, and exceeding these internal limits constitutes the essence of abuse of right.

## Matei Cantacuzino's contribution to the Theory of Abuse of Right

### *The Legal Work of Matei Cantacuzino and the place of abuse of right within it*

Matei B. Cantacuzino (1855-1925) is inscribed among the prominent figures of Romanian legal doctrine at the beginning of the 20th century. Trained at the universities of Heidelberg and Paris, where he obtained his law degree in 1877, Cantacuzino combined the career of magistrate and lawyer with teaching activity at the University of Iaşi, where he taught civil law starting in 1901 and fulfilled the function of rector during the First World War (1916-1918).

His capital work, Elements of Civil Law, published in 1921 at Cartea Românească Publishing House, represents an ample synthesis of Romanian

civil law, in which the author analyzes, among other things, the problematic of the exercise of subjective rights and their limits (Cantacuzino, 1921). The work, although published after World War I, reflects the legal thinking accumulated by the author in previous decades, being strongly influenced by his studies in Paris and Heidelberg, as well as by his long practice in magistracy and law. Unlike Djuvara's philosophical-legal approach, Cantacuzino's contribution is situated in the zone of legal dogmatics, being oriented toward the technical and practical aspects of civil law institutions, with particular attention given to practical applicability and the concrete consequences of proposed theoretical solutions.

***The subjective criterion of intent to harm in identifying abuse of right***

In Cantacuzino's conception, abuse of right is founded on the subjective criterion of intent to harm (animus nocendi). The Iaşi professor appreciated that the expression abuse of right implies an apparent contradiction, since to affirm that the exercise of a right is abusive is equivalent to saying that the limits of the right have been exceeded (Cantacuzino, 1921). In other words, when the holder exercises his right with the exclusive intention to cause prejudice to another, he exits the sphere of legal protection and enters the domain of the illicit.

This approach inscribes itself in the line of the subjective theory of abuse of right, which emphasizes the psychological element of the holder's conduct. For Cantacuzino, the exact determination of the demarcation line between the prerogatives contained in the subjective right of a person and the point where the subjective right of another begins constitutes a fundamental problem, which generates numerous practical difficulties and legal conflicts.

***Abuse of right and civil delictual liability: interferences and delimitations***

A significant contribution of Cantacuzino consists in the analysis of the relationship between abuse of right and civil delictual liability. In his vision, the exercise of right with the intention to harm third parties exceeds the boundaries of normal exercise and attracts the obligation to repair the prejudice caused, in conformity with the principle malitiis non est indulgendum (malice is not to be indulged). Thus, abuse of right appears as a particular form of manifestation of civil delict, subject to the rules of civil delictual liability.

Cantacuzino emphasized that judicial courts have combined the traditional principle neminem laedit qui iure suo utitur with the new idea of intent to harm, reaching the conclusion that the exercise of right for the

purpose of bringing prejudice to someone can no longer be considered normal and attracts the holder's liability.

### *The sanctioning regime of abuse of right in Cantacuzino's vision*

Regarding the sanctions applicable to abuse of right, Cantacuzino pronounces himself in favor of obliging the author to repair the prejudice caused. Liability for abuse of right presupposes the cumulative fulfillment of the conditions of civil delictual liability: the existence of prejudice, the illicit act consisting in the abusive exercise of right, the causality relationship and fault in the form of intent. This conception exercised a durable influence on Romanian doctrine and jurisprudence, being reflected later in the solutions adopted by courts of justice in the matter of abuse of right.

## The value and actuality of interwar doctrinal contributions

### *Convergences and divergences between the conceptions of Djuvara and Cantacuzino*

Analyzing comparatively the contributions of both jurists to the theory of abuse of right, both points of convergence and elements of specificity which differentiate them can be identified. Both authors recognize the existence of limits in the exercise of subjective rights and admit that the legal order cannot tolerate the use of rights in a manner contrary to the purpose for which they were recognized. Likewise, both Djuvara and Cantacuzino ground liability for abusive exercise of rights on the principles of civil delictual liability.

Nevertheless, the perspectives from which the two jurists approach the problematic of abuse of right differ substantially. Djuvara, formed in the tradition of Kantian-inspired philosophy of law, constructs the theory of relativity of rights starting from the rational foundations of the legal phenomenon, arguing that the limits of exercise of right derive from its social finality and from the exigencies of the ideal of justice (Djuvara, 1930). Cantacuzino, on the other hand, adopts a technical-legal perspective, centered on the subjective criterion of intent to harm and on the interferences between abuse of right and civil delictual liability (Cantacuzino, 1921).

This difference of approach is also reflected in the criteria for identification of abuse of right proposed by both authors. While Djuvara emphasizes the diversion of right from its social finality, approaching the quasi-objective theory of abuse of right (considering that his theory is not purely objective, retaining normative elements derived from the ideal of justice), Cantacuzino privileges the psychological element of the holder's

conduct, inscribing himself in the line of classic subjective theory. The two conceptions are not however incompatible, but rather complementary, offering together a complete image of the institution of abuse of right. Djuvara's finalist approach allows identification of abuse even in the absence of proven intent to harm (when the exercise of right is manifestly contrary to its social destination), while Cantacuzino's subjective criterion ensures certain sanctioning of malicious conduct. This complementarity was implicitly recognized by interwar jurisprudence, which often applied both criteria cumulatively or alternatively, depending on the circumstances of the case.

***The influence of interwar doctrine on the regulation of abuse of right in the New Civil Code***

The doctrinal contributions of Djuvara and Cantacuzino have exercised a significant influence on the subsequent evolution of the theory of abuse of right in Romanian law, an influence which is also found in the current regulation of this institution. Art. 15 of the new Civil Code, according to which no right may be exercised for the purpose of harming or damaging another or in an excessive and unreasonable manner, contrary to good faith (Parlamentul României, 2009), reflects a synthesis of both conceptions, combining the subjective criterion of intent to harm with the objective criterion of excessive and unreasonable exercise of right.

The contemporary legislator has thus opted for a formulation which integrates both doctrinal perspectives, recognizing that abuse of right can be identified both through reference to the subjective element of bad faith and through reference to the objective element of diversion of right from its finality. This legislative solution confirms the durability and value of the theoretical constructions elaborated by interwar doctrine.

*The European dimension of abuse of right.* In the context of European integration, it is relevant to mention that the prohibition of abuse of right has acquired a supranational dimension, contributing to ensuring the coherence of the legal system of the European Union and to guaranteeing the correct functioning of the internal market. The Court of Justice of the European Union has developed constant jurisprudence in the matter of abuse of right, sanctioning practices through which legal subjects attempt to benefit fraudulently from the rights conferred by European legislation. This evolution demonstrates that the principles developed by Romanian interwar doctrine inscribe themselves in a broader process of development of the theory of abuse of right at European and international level (Byers, 2000; Paulsson, 2021).

***The methodological relevance of interwar approaches for contemporary legal research***

Beyond substantial contributions to the edification of the theory of abuse of right, the work of Djuvara and Cantacuzino presents an indisputable methodological value for contemporary legal research. Djuvara's philosophical-legal approach, founded on rational analysis of the principles of law, offers a model of reflection on the foundations of legal institutions which transcends legislative conjunctures. Similarly, Cantacuzino's dogmatic rigor, accompanied by attention to practical applications of theoretical constructions, constitutes an example of legal research anchored in the realities of legal life.

The return to interwar doctrinal sources proves thus not only an exercise of history of law, but a necessity for profound understanding of contemporary legal institutions. Recent comparative studies (Mayrand, 1974; Byers, 2000) confirm that the debates initiated in the interwar period remain current for contemporary legal systems, offering valuable conceptual instruments for resolving tensions between individual freedom and social solidarity.

## Conclusions

The theory of abuse of right, as elaborated in Romanian interwar legal doctrine, represents a valuable contribution to the patrimony of national legal thought, whose echoes resonate in the contemporary regulation of this institution. The comparative analysis of the conceptions of Mircea Djuvara and Matei Cantacuzino reveals two distinct but complementary approaches, which have substantially enriched the theoretical foundation of abuse of right in Romanian civil law.

Mircea Djuvara, situating himself in the tradition of Kantian-inspired philosophy of law, founded the theory of relativity of subjective rights, arguing that these do not constitute absolute prerogatives, but legal realities limited by their social finality and by the exigencies of the ideal of justice. In his conception, abuse of right appears when the holder diverts the right from the purpose for which the legal order recognized it, thus contravening the very rational foundations of the legal phenomenon.

Matei Cantacuzino, adopting a technical-legal perspective specific to civil law dogmatics, analyzed abuse of right through the prism of the subjective criterion of intent to harm, bringing to light the interferences between this institution and civil delictual liability. His contribution clarified

the conditions under which the exercise of a subjective right can attract the holder's liability for prejudices caused to third parties.

The value of interwar doctrinal contributions is not however reduced to the influence exercised on positive regulation. The work of Djuvara and Cantacuzino offers the contemporary researcher methodological models of indisputable actuality: the philosophical-legal approach, preoccupied with the rational foundations of legal institutions, and the dogmatic approach, oriented toward technical rigor and practical applicability of theoretical constructions.

In the context in which the principle of good faith and the prohibition of abuse of right have acquired the status of fundamental norms of contemporary private law, including in the jurisprudence of the Court of Justice of the European Union, the return to the doctrinal sources of these institutions appears not only as an endeavor of historical-legal erudition, but as a necessity for any rigorous research in the matter. The contributions of Mircea Djuvara and Matei Cantacuzino remain, from this perspective, essential landmarks of Romanian legal thought, offering valuable conceptual instruments for understanding and applying the theory of abuse of right in the current legal context, both national and European. Moreover, the dialogue between the finalist and subjective conception, as configured by both authors, continues to be relevant for contemporary debates regarding the balance between individual will autonomy and the exigencies of social cohesion, offering a balanced perspective which surpasses both exacerbated legal individualism and oppressive collectivism.

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