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Review of the volume "Abuzul de drept", author Camelia Ignatescu, published by LUMEN Publishing House

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Abstract: The volume to be analyzed is a work that was required in the Romanian doctrine (in the sense of dedicating this subject to a monograph that would treat it extensively) for many years, since the abuse of law is still a legal institution not covered by the Romanian legislation and jurisprudence. There is often confusion in practice between the abuse of law and other legal institutions, such as fraud in law, appearances in law, silence, and the paper examines precisely these issues. From this point of view, it presents a summary of the relevant legislation and doctrine in the field, both at national level and in the comparative law, in order to fill the gaps in the Romanian legislation (the few laws on law abuse are still considered by practitioners to be insufficient). It also reviews the relevant Romanian case and not only in a theoretically structured analysis, focused on the clarification of the concepts and the circumstance of the institution of the abuse of law in terms of its characteristics. The theme is also considered from the perspective of general principles of law called to place order where the law does not specify and the courts avoids clarifying, being a useful guide to working for judges who feel the need for an inspirational tool for motivating their decisions.

Keywords: *law abuse; legislation; legal institution; Romanian legislation.*

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What is certain from the bibliographic references and the content of the book is the extremely serious documentation and the wide perspective, starting from which the author structures his analysis. Taking into account the poor practice in the field of Romanian jurisprudence, it is worth mentioning the author's effort to bring unpublished case decisions to the paper so far. In view of the above, we consider that this monograph is as complete as possible in the present legal and doctrinal context.

What we have here is a civil law work that focuses on one of the least approached topics in the Romanian civilian legal literature (compared to others, of course). From this point of view, it is part of the tendency of this legal collection to bring to readers papers containing novelty elements and less frequently addressed topics. Under the conditions of the Romanian legislative changes, with the entry into force of the New Civil Code, the work comes to make an analysis focused on these changes, taking into account the economic and social trends, which, again, makes it up-to-date, in the tendency of the collection in which we recommend publishing to bring to the market works with topics of current interest.

The theoretical aspects of the treated subject are outlined very well. Regarding the practical aspects, the author himself draws attention to the fact that in the subject matter, the national practice is disparate, non-unitary and quite rare. However, as far as possible, we appreciate that the author has managed to accumulate sufficient case-law decisions that allow him, including from this perspective, to draw pertinent conclusions. Therefore, we appreciate that the study topics proposed by the paper have been approached properly, treated in sufficient detail and given to each of them the importance they have in doctrine and practice.

At first glance, it may seem that the author focuses too much on the foreign legal doctrine and brings arguments as to the case of the French courts where she discusses the issues with reference to the Romanian legal space. We consider, however, that in the absence of a consistent and serious practice in the field, as well as of an insufficiently controversial national doctrine, the author turned to the most compatible source of inspiration possible, namely the French one, which traditionally constituted the source of inspiration for the Romanian civilian lawmaker. Therefore, it was not by mistake that the author cited foreign jurisprudence in certain sections of the paper, but because of a lack thereof in the practice of national courts.

What is remarkable from the structure of the paper is that the author opts for a separate section of her own conclusions at the end of the paper. It is true that throughout the book it is paid special attention to objectively presenting the issues in question, including controversies over the subject,

especially given the rather diverse sources of information, so we understand why the author tries not to complicate the analysis and the course of the research with own opinions.

The most important point to emphasize is that the work comes to greatly help practitioners who are looking for a solid theoretical foundation on which to base their arguments in the cases in which they would like to invoke the abuse of law. This kind of analysis has been made in the Romanian legal literature, but punctually, on various specific institutions of various branches of law or general, but in short, specialized articles, this being an extended work dedicated to the subject and, much help to those who need a theoretical and practical guide in the field. The manner in which the author valorizes the texts of the law in the national legislation, which she completes with points of view of the Romanian and foreign doctrine in order to outline an institution of law in a complete, unitary manner, surpasses any other small improvements that we could proposes and transforms the work into a theoretical and practical value.

It is noted in the judicial practice that practitioners are afraid to invoke the abuse of law, as advocates consider that this instinct leads them to an unsafe ground, so they use it as a follow-up spring of argumentation and the courts seem to reject what is being invoked on this ground for reasons related to the fact that the institution of abuse of law is insufficiently contrived in legal and doctrinal terms. This paper is intended to provide a solid foundation to help solve this problem, so it addresses not only the theorists, but also the practitioners of law, a category of readers equally taken into consideration by the law collection of the publishing house.

The first third of the paper is devoted to general notions of interest for further treatment of the subject matter. Although these general notions are organized in 7 of the 11 chapters of the book, we note that it actually occupies only a third of the manuscript. The last four chapters are dedicated exclusively to the subject of abuse of law, so we believe that the work is judiciously fragmented by chapters and sections. Even if only for didactic reasons, the author also inserts a final section of conclusions, welcome to the observations made above, when we recommended that the views of the author are emphasized not only in this distinct section, but also in the content of the volume.

The bibliography studied by the author is extremely vast, much wider than we found in other legal writings, which leads us to the conclusion that the author tried to select from the Romanian doctrine, the French one (important because the French legislation and doctrine constitute, in traditionally, the source of inspiration for the Romanian legislator in the field

of civil law), but also from common law, those works that are relevant but in the most complete manner. Where the Romanian legislator is silent, and the Romanian doctrine is limited to a superficial analysis or does not analyze at all, the author tried to fill the gaps by bibliographic references to foreign doctrine. So, the work is well documented, and the sources of information are judiciously capitalized throughout.

The volume "Abuzul de drept [Abuse of Law]" is a monograph underlying the analysis of abuse of law not only in civil law, but also in all the branches of law for which civil law can constitute a common right in the matter (labor law, commercial law, civil proceedings law, family law, etc.), so defining and circumscribing clearly the notions of interest in the matter is a welcome item. In conjunction with the extremely extensive bibliographic device that reveals serious, committed documentation, it transforms this monograph into a valuable and well-received study.

We recommend reading this volume because it is well documented, well structured, addresses a topical subject in a society in which the extension of the exercise of subjective rights to the limit of third party supportability seems to have become the rule in a legal context in which practitioners feel the need for some directions of doctrine that will help them to combat these socio-economic tendencies in practice, and the judges need sources of local inspiration, molded on the specifics of the national legal realities, especially from the perspective of the New Civil Code, which is analyzed in the paper in parallel with the Old Civil Code.

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