SUMMARY

This research is based on the analysis on the legal means through which public and private interests are interwoven in exercising the right to property in cities within the European cultural space.

Given the multitude of issues that could be addressed in terms of real rights, this thesis focuses on the role played by easements in limiting the exercise of rights to real property. The issue of easements will be analysed from an interdisciplinary perspective. Since changes in human activities are the engine that runs and further justifies the process of continuous transformation and renewal of cities, the role of urban planning in urban renovation operations cannot be ignored.

This thesis comprises two main parts: the first focuses on the ancient origins of the urban civilization, regarding regulations in matters of right to property and real easements, other than the current legal regime of easements, based on the two major legal systems – the Continental-European and Common Law - .

Numerous legal opinions, practical cases, as well as debates on the delimitations of proper easements from simple limitations to the right to property will be discussed, approaching the regime of easements of civil law and of easements by right in urban planning in France, Switzerland, Romania, and, not least, in Common Law.

By means of a comparative historical methodology, the focus will be laid on the legal instruments through which easements succeed in making their contribution, at aesthetic level, to living as harmoniously as possible in the urban space.

This thesis is structured into **four chapters**, each chapter containing, as appropriate, subchapters, sections, subsections and paragraphs.

Chapter I focuses on the notion of “civilization” from a socio-legal perspective.

The specificity of Rome’s political development over time, its passage from city to empire, is explained herewith by means of the phenomenon entitled "*caesarism*". This entails the succession of a republic, that can no longer succeed in governing itself, by a monarchy. "Normally", in the natural order of things, the republic succeedes royalty; this is the case of

Greece and Rome. The same situation occurred in most European countries, starting with France.

In France, as in Rome – yet not Greece, which remained unfamiliar with this phenomenon -, caesarism is the monarchy that *succeeds* a republic that *had succeeded* a royalty. Another historical sequence is thus added, which is absent from the Greek experience.

Commencing with this primary form of political organization – the city / citadel - , the the manner in which the concept of *civilization* was attempted to be defined by the specialists is analysed.

The first civilizations were born in river valleys, which were the first areas of sedentary agricultural economy; **all civilizations imply the existence of an urban life and progress according to a similar process of state organization.**

The city exists in civilization, Professor Djuvara claiming that "*the style of a civilization is crystallized in cities*"[1].

Civilization entails large ensembles with common features, characterized by certain dynamics and covering certain periods of time, as exemplified by the Egyptian civilization, the Chinese civilization, the Hellenistic civilization or the Greco-Roman civilization.

Either due to violent confrontations or to voluntary immitations and normative assimilations, the "grafts" of some legal cultures operated over others. These effects are observed, in time, in a progressive *modus vivendi* similar within various etatist communities.

At first sight, the characteristics of a material - or dominantly material - character (weapons, tools, techniques, clothing, habitat, etcr.) appear to be more readily adopted than moral traits (religion, language, art, etc).

After a more in-depth analysis, however, the reality is different: one element from the first category, habitat, displays a remarkable conservative tendency, while religion is one of the foreign elements that have priority in penetrating the walls. By studying the relative rate of penetration of cultural traits, the *hard core* of a culture can thus be discovered. Contrary to other elements of civilization, which are more readily adopted by a society that accepts acculturation, such as costume, the type of habitat is remarkably fixist. The style of peasant

[1] Neagu Djuvara, *Civilizaţii şi tipare istorice. Un studiu comparat al civilizaţiilor,* Editura Humanitas, Bucureşti, 2008, p. 25.

houses, in each ethnic group, has defied time, at least as long as no revolution occurred in construction techniques and materials.

It is precisely this fixity that charactrises habitat, demonstrated throughout several historical periods, that is considered to be the hard core of a civilization.

Chapter II is dedicated to the ancient foundations of urban civilization, comprising two subchapters and several sections.

Starting from the definition of "urban planning", laying emphasis on the elements that differentiate "urban planning law" from other branches of law, as well as from the presentation of a brief history of urban planning law, the legal regime of property in Roman law is also analyzed.

If the first two sections, the emphasis is laid on the characteristics of Roman urban planning, derived from the lessons of ancient Greek combined with Etruscan urban traditions, and on Roman Dacian urban planning In the third section, however, the focus shifts on the primitive forms of property, quiritary property, as well as on the limits of exercising the right to real property, an important role being assigned to the division, classification and defense of easements.

Roman urban planning shares a series of common features, as well as differences, with ancient Greek urban planning.

Given that the concept of public market (*agora*, which became *forum*), as the center of the city, was taken over from the Greeks, and principles underlying the establishment and organization of cities (the regular use of plans, straight streets and sidewalks for circulation, sewage systems) were taken over from the Etruscans, the Romans sought, by means of the geographical location of their cities, to overcome, as easily as possible, problems related to communications, safety and sanitation.

Urban planning rules and principles were so advanced that the existence of building regulations, as well as evident urban zoning, following functional criteria, land register and highly important edilitary services could be observed.

The Roman influence in the field of urban planning is especially highlighted in Western Europe. Many cities, that still exist nowadays, were rebuilt on the ruins of Roman ones (Turin, Florence, Cologne, Paris, London, Newcastle, Vienna, Lyon, Cordoba e et ejusdem farinae).

Chapter III focuses on the historical evolution of the concept of propery and on urban planning concerns in the European cultural space.

The basis of the urban network of the 11th and 12th centuries was established in the 10th century.

The peak moment of classical urban planning corresponds to the 17th and 18th centuries, a period dominated by French influence, which replaces the Italian one.

Decorative easements are mostly encountered, coercing a certain number of houses to comply with a particular architectural program. *Urban planning is dedicated to exterior decorations, determined, of course, by the concern for the quality of life, but, above all, resulted from the concern for public, social and even fashionable life*. No attention is paid to interior design. The city is a mise en scène. ***The appearance, the façade, are essential.***

The first great urban planning projects in Europe began in the 19th century. Paris was the first city that underwent such a transformation, setting the standard for the entire continent in terms of adopting rigor and systematization in urban planning.

The **renovation of Paris or Haussmann's plan** was a policy for the modernization of the capital of France, ordered by the Emperor Napoleon III and led by the Prefect of the Seine, Baron Georges-Eugène Haussmann, between 1853 and 1870. The renovation of the city corresponds to the urban planning tradition that started during Renaissance and also included several other cities of the 18th century, such as Bordeaux, where Haussmann was prefect for a few years.

The project comprised all the aspects of urban planning, both in the center of Paris, as well as in the surrounding districts: streets and boulevards, new regulations imposed on constructions, especially in terms of façades, public parks, sewers systems and fountains, urban facilities and public monuments. The planning was influenced by several factors, one of which was the history of the city regarding citizens' revolutions.

In Romania, according to the Romanian Civil Code of 1864, easements were an "encumbrance imposed on an imovable property for the use and usefulness of an imovable property having another master."

Legal scholars have constantly criticized the classification proposed by this Civil Code, arguing that neither natural not legal easements are dismemberments of the right to property with bearing on the servient tenement, but are simple restrictions (limitations) of the right to property.

Moreover, between natural and legal easements there is no difference, as has been shown, both cases producing effects as a result of the will of the legislators, concluding that the term of easement is applied too liberally by legislators, the genuine easements being only

those established by "human action". Thus, critics have practically returned to the classification of classical Roman law on all categories of *jura in re aliena*.

The applicability of so-called natural easements established in the Civil Code of 1864 could not, however, be accepted *tale quale* on the public domain as well, given the fact that its assets were not "in commerce".

Legal scholars from the interwar period concluded that the goods in the public domain could not be affected by any easement, with the exception of the "public's right to use them in accordance with their destination". At the same time, in the benefit of public goods, various administrative restrictions that affected waterfront private immovable property were recognized, which aimed at protecting general administrative interests, hence their different objectives, depending on the area in which they intervened.

Among the most important administrative restrictions were the so-called "rehabilitation easements", consisting in measures taken by law or regulations for the beautification and sanitation of cities, alignment, construction, repair or wiping off imovable property, sewerage, etc., measures imposed on private owners in order to exploit goods with a special regime, such as forests, or restrictions imposed on the owners located in the vicinity of fields and buildings belonging to the public domain (military fortifications, instruction fields).

In **Chapter IV**, the modern premises of the concerns regarding public order in Italian and French law, as well as the premises of urban planning in the United States of America will be analyzed first, followed by the legal regime of servitudes in postwar Romania.

Due to the increased interest, in the second half of the 20th century, for the environment, preservation and environmental easements formed a new group of easements, which was created in order to maintain and preserve unique areas, such as unaltered landscapes, open spaces, historical sites and buildings that are considered to be significant from an architectural perspective.

A variety of such interests, known as solar and wind easements, was developed due to the need to provide owners with access to sunlight and wind, for purposes related to the production of renewable energy.

In spite of the importance which preservation and environmental easements have, at present, they were not recognized by the traditional Common Law system, due to the fact that the latter limited the category of easements to those "arrangements" that allowed their holder to enter and to use, for a particular purpose, the land owned by another person. Easements thus represented a means of restricting the owner's rights over his/her own land.

Secondly, the analysis of the legal regime of civil law easements and urbanism easements in France, Switzerland in common law and, not least, in Romania, can be found in the wording of subsections 2, 3, 4, 5 of this final chapter.

In French law, the main source of law for easements is the Civil Code, namely the Section "About easements or land services" (Art. 637- art. 710). Also, there are special provisions, such as the Urban Planning Code, Forestry Code, Rural Code, Public Health Code, which establish the existence of other categories of easements.

Classification of easements in urban and rural, classification so important in Romanian law due to its effects, constitutes even today an essential distinction.

Rural easements are the oldest and most important real rights over the property of another (*jura in re aliena*). They were created for the profit of land or unclear land trusts (*inaedificatio),* of crop lands or without buildings, which constitute the fundamental and most valuable means of production in the sedentary agrarian economy of a scalvagist type.

Rural easements were intended for capitalisation, rational and integral use of land trusts (*aedificatio*) or with buildings (whichever was their administrative division or location - the city, town or village). Therefore, it is to be noted the need to delimit the above mentioned statement, the argument that urban easements would be found only in cities and rural easements only in the country. Their location is filled with the usefulness criterion or immediate purpose and, as such, although of a different type, they can be located in the same locative space. Therefore important is only the dominant fund's destination (agricultural or housing).

Division of easements in urban, on the one hand, and rural, on the other hand, was important because rural easements were classified as *res mancipi* (Julius Paulus still deems them immaterial, although they are parts of corporal goods, such as land), while urban easements were considered to be *res necmancipi.*

A final dimension taken into consideration, in Subchapter 6 of the last chapter, is the liability for non-compliance with urban planning law, referring to the special protection granted under French law and civil liability in Romanian law.

CONCLUSIONS

This paper is not aiming to provide final answers, believing that authentic answers related to servitudes and legal limits for the exertion of property rights are, not by books, but by experience, solutions to problems involving the interested individuals and the authorities.

As the paper shows, similarities in theoretical regulations related to servitudes, their definition, classification and character, are striking between legislations of EU member states, the French model bearing its mark on the Romanian legislation.

Nevertheless, we may notice with some regret that, although French regulations are not flaw-proof, the French law-maker, unlike the Romanian one, succeeded in drafting a clearer encoding and systematization of rules on public interest, private interest, legal limits for the exertion of property rights, echoing of preoccupations and active involvement of local communities in urban rejuvenation and physical city expansion.

Legal practice follows the same direction, using only different common-law specific instruments. It is largely presented in this paper, illustrative being the cases ”Penn Central Transportation Co v. City of New York” or ”Charleston Center”.

Even if we appreciate that the solution pronounced in our country, Sentence no. 2520 of 28 June 2012, pronounced irrevocably by the Court House of Dâmbovița – 2nd Civil Section of Contentious Administrative Matters no. 2183/120/2012, regarding the demolishing of the office building ”Cathedral Plaza” of Bucharest, erected in the close proximity of Sf. Iosif Cathedral, is an attempt to return to normality and evidence of the fact where is a legal interest there is always a will (letting aside the ignorance so frequently met), there are also legal instruments by means of which such a solution, like the pronounced one, should be solidly grounded and legal, we consider that in many cases there should be unrest when the respect for the public interest and the protection of the environment, city planning, historical monuments of national and world value are completely missing.

The very notion of ”public interest” is such a volatile expression that sometimes is reminded with other occasions that those that would truly justify it, probably because of the minimal criteria of appreciation of such notion are not regulated. On the other hand, we appreciate this situation as being the consequence of a rather poor contribution of our courts in administrative matters, which also results from the colossal difference compared to the French administrative system.

We also appreciate that the legal regulation of some interdictions *nec altius tollendi* or *altius tollendi,* and the establishment of areas forbidden for new buildings (separately from protected areas related to monuments of architecture), depending on the urban living perimeter, would be a step forward in the effort of systematizing regulations that would outline in Romanian legislation the concept of "city rejuvenation".

An illustration of this concept is in the provisions of the *Walloon Code for Land-use planning, Urbanism, Heritage and Energy* that, as mentioned in this paper, is a definition and a characterization of concepts of "rejuvenation", respectively urban "revitalization".

As I noticed, the approach of the esthetic doctrine in common law and of the esthetic criterion in the European continental system is an important source of legal practice, which practically starts in every individual and every local community that chooses not to be passive.

From our research to date, which is by no means exhaustive, we found no similar preoccupation or approach reflected in the daily practice in the main Romanian cities at a legislative level or at the level of how local or central governments understand to fulfill their assignments.

It is obvious that on paper there are provisions, as identified in the "future" General Urban Plan of Iasi City, which is for the time being a desideratum, related to the improvement of the outer aspect of buildings, façade architecture etc., existing problems being clearly identified in the Development Integrated Plan for the Growth Pole of Iasi 2009- 2015.

This is why we consider that the passing of a Law of facades and shop-windows, that would regulate the existence of environment-integrated size rules, the obligation to observe façade cleaning and maintenance regulations, the obligation to observe the functional compatibility of the buildings with the area they are erected in, is a first step in returning to normality and our inclusion at this level in the "Great European family".

This is the subject matter where I appreciate that "public interest" has a good say, in maintaining and prevention of façade degradation in buildings erected in great urban centers, in traditional areas of cities.

I also appreciate that in the future in Romania, legal limits will be systematized depending on the envisaged interest, urbanism servitudes and their inclusion in a normative act with a higher statute, like a City-Planning Code, that would bring together legal provisions that are currently scattered and regulated chaotically.