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OTHER ROMANIAN CIVIL CODE PROVISIONS ON THE MEANS FOR PROTECTING THE SUBJECTS OF LAW IN ECONOMIC INFERIORITY

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Abstract

During the timespan of over 150 years that has passed since the adoption of the old Romanian Civil Code (in force until October 1, 2011), a code influenced by the French Civil Code, which was passed almost 220 years ago, there have been large mutations at economic level that have had profound consequences in the social structure. In the two studies, presented by me during the conferences organized under the coordination of Professor Elena-Ana Iancu, I tried to analyze the measures introduced by the new Romanian Civil Code for the protection of the contractual part located in a position of economic inferiority. While in the first study, I managed to analyze only the injury, the hardship, and the reduction of the criminal clause, in this second paper I analyzed most of the other means considered by the new Civil Code for the protection of subjects of economic lower law.

Keywords: *contract formation, obligations to inform the contracting parties, unfair terms, standard clauses, non-monetary clauses, compensation for non-pecuniary damage*

INTRODUCTION

In the study published by me last year, I quoted part of the explanatory memorandum to the Draft of the New Civil Code, pointing out that the authors of the draft stressed that among the goals pursued in determining the general regime of obligations was also "to ensure a proper protection for the subjects of law in a position of economic inferiority". Therefore, the authors of the new Civil Code considered the problem of the inequality of economic power of natural and legal persons and, consequently, they wanted to avoid situations in which persons with superior financial possibilities impose their own interests in contracts concluded with parties with an inferior economic situation. In other words, the authors of the new Civil Code have noticed the danger of aggravating the gap between rich and poor.

In order to achieve this goal, in the explanations given to Book V "On obligations" within the Explanatory Memorandum to the Draft Civil Code, it is shown that

special regulations have been provided regarding the formation of the contract, the integration of standard clauses in the contract, the reduction of the criminal clause, the compensation of the non-patrimonial damage, etc. To these means, listed in the Explanatory Memorandum, it is necessary to add, according to the conclusions of the doctrine, the hardship (*clausula rebus sic stantibus*).

Notwithstanding the explanations given in the Explanatory Memorandum, the provisions on the protection of the party in a situation of economic inferiority do not form separate chapters or sections, they are dispersed throughout Book V of the new Civil Code.

Within the limits imposed by the small size that were set for us, we were able to analyze in detail in the previous study only some of the means envisaged by the editors of the new Civil Code for the mentioned purpose, namely: injury, hardship, and reduction of the criminal clause. We will try in this second study to refer to the other means envisaged by the new Civil Code for the protection of subjects of law economically inferior.

I. FORMATION OF THE CONTRACT

In this field, the new Civil Code brought important novelties (art. 1182 – 1203). The old Romanian Civil Code did not regulate the pre-contractual stage because, according to the principle of consensualism, taken over from the French law, which dominated the contractual law, the conclusion of the contract was reduced to the simple meeting of the offer with the acceptance. Even the notion of "contractual liability" appears for the first time only in the new Civil Code of 2009, but that did not mean that contractual obligations could be violated without any consequence. The compensation due to the creditor in the event of the debtor's non-performance of the obligation was regulated, on a French model, in the chapter "Obligations Effect" ("*De l'effet des obligations*") as a "performance of obligations by equivalent" where enforcement in kind was no longer possible ("*Des dommages et intérêts résultant de l'inexécution de l'obligation*").

The "negotiations between the parties" that precede the conclusion of the contract are regulated for the first time, but the novelty is, in the spirit of the new principles governing the contract, the right of the court to intervene in the formation of the contract. According to art. 1182 par.3 NCC, the court has the right, at the request of either party, to complete the contract, if the parties have agreed on the essential elements, but have not reached an agreement on the secondary items. The intervention of the court is obviously a means of defending the economically weaker side in order not to be coerced by the other side.

The requirement of "good faith" appears in several ways. Article 14 provides it as a general condition for the exercise of rights and the performance of obligations by all natural and legal persons, and Article 1170 repeats it as a special rule for the conclusion and performance of the contract: "The parties must act in good faith both in the negotiation and conclusion of the contract and throughout its execution.

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They may not remove or limit this obligation". Article 1183 regulates good faith in negotiations (Good faith in negotiations):

- a. The Parties shall be free to initiate, conduct and break negotiations and shall not be held liable for their failure.
- b. The party engaging in a negotiation shall be bound by the requirements of good faith. The parties may not agree to limit or exclude this obligation.
- c. It is contrary to the requirements of good faith, inter alia, the conduct of the party initiating or continuing negotiations without the intention of concluding the contract.
- d. The party initiating, continuing, or breaking negotiations contrary to good faith shall be liable for the damage caused to the other party. In establishing such damage, account shall be taken of the expenses incurred in the negotiations, of the waiver by the other party of other tenders and of any other similar circumstances.

Thus, although the parties have the freedom to initiate, conduct and break negotiations and cannot be held responsible for their failure, yet the party that engages in a negotiation is kept complying with the requirements of good faith. The parties may not agree to limit or remove this obligation. Paragraph 3 of Article 1183 stipulates that it is contrary to the requirements of good faith, inter alia, the conduct of the party initiating or continuing negotiations without the intention of concluding the contract. It is expressly provided for the liability for initiating, continuing or breaking negotiations contrary to good faith, and the criteria to be considered when assessing the damage are also provided for: the expenses incurred for negotiations, the waiver by the other party of other tenders and any other similar circumstances.

Unfortunately, the lawmaker does not also foresee the kind of incurring liability in case of harm to good faith in negotiations. As in the Romanian law there is no notion of "culpa in contrahendo" (pre-contractual liability), the doctrine has taken the opinion in the sense of a civil tort liability (Moise, 2012, page 6), according to the general principle of the Romanian civil law, according to which the contractual liability is special and operates only in case of violation of a valid contract concluded, and any liability outside the contract can only be the common law liability that is the tort liability.

Although Article 1183 does not expressly provide for it, the doctrine has taken the view that the injury of the requirement of good faith may justify the removal by the court of the contractual clauses unfairly imposed by a professional (in other words, the court may declare them to be without effect) (Pop, Popa, Vidu, 2012, p. 171).

Article 1191 enshrines the principle of irrevocability of the offer. According to Article 1193, the offer without a period of acceptance, addressed to a person who is not present, must be maintained for a reasonable period, according to the circumstances, for the addressee to receive it, to analyze it and to send the acceptance. The tenderer shall be liable for any damage caused by the revocation of the tender before the expiry of that period.

II. OBLIGATION TO INFORM THE CONTRACTING PARTIES*

The old Civil Code provided among the requirements for the validity of the contract also "the valid consent of the obliged party", but the means of defending the will expressed freely and knowingly have been much criticized by the doctrine (Fr. Terré, Ph. Simler, Yv. Lequette, 2005, page 255). Defects in consent, regulated by the code, could only be proven after the conclusion of the contract and had only curative value. Much more effective are the preventive measures taken before the conclusion of the contract that prevent the vitiation of the consent of the parties, especially of the economically disadvantaged one, namely, imposing the information and the obligations for clarification.

The Romanian doctrine stressed that it is more appropriate, instead of regulating the contract by mandatory provisions, to deal with the consumer as a free and intelligent person, who can defend his own interests, if the means for correct information are put at his disposition (I.FI. Popa, 1998, pp 77 and following).

The old traditional conception is outdated, according to which in a liberal society everyone must inform themselves before concluding a contract and that there is an obligation to inform only where there is an obligation to inform is expressly provided for in the law, is outdated. (Such an obligation was provided for in article 1337 of the old Civil Code of 1864 in the charge of the seller, who had to inform the buyer about the charges that encumbered the work, otherwise he was called to answer)

In the current consumer society such a conception no longer corresponds to the times because economic inequality has as a consequence the inequality of the possibility of information, which damages the balance of the contract. That is why the doctrine is in favour of a general obligation to inform the contract partners (D. Chirică, 2008, pp 284-301). It is she who has also established the general conditions that the obligation to inform must meet: the information must be complete, be clear and unequivocal, be accurate and up to date. There is even talk of an "informative formalism", that is, the fulfillment of the obligation to inform in a form provided by law, which ensures compliance with and control of compliance with the requirements regarding the information of the contractual partner (Liviu Pop, 2009, pp. 292-296).

Unfortunately, the new Civil Code does not include a special chapter dedicated to information obligations. We find only "hidden" provisions, implicit. Thus, art. 1214 par. 1 regulates the "fraud by reluctance" as a defect in consent, that is to say, the opposing party "failed, fraudulently, to inform the contractor of circumstances which it was appropriate to disclose to it".

Or Article 1695, which provides for the guarantee against eviction, regulates in par. 2 the guarantee against eviction resulting from the claims of a third party, which is due only if they are based on a right arose before the date of sale and which has not been brought up to the purchaser's attention (emphasis added by us) up to that date (Liviu Pop, Ionuț-Florin Popa, Stelian-Ioan Vidu, 2012, p. 93). However, the quoted articles are rare exceptions.

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Under the influence of the doctrine, but also of the growing number of laws in the field of consumer protection, which have transposed European directives, the Romanian caselaw also slowly begins to recognise the existence of a general obligation to inform.

More detailed rules on the obligation to inform are found only in the special laws on consumer protection, with the mention that the laws adopted after Romania's accession to the EU have transposed the European directives in the field into the national legislation (Chr. Alunaru, 2010, pp 13-30). There are laws or ordinances of the Government in areas such as the activity of marketing packages of touristic services, the conclusion and execution of distance contracts, electronic commerce, universal service and users' rights on the electronic communications networks and services, consume loan agreements for consumers, individuals, protection of purchasers with regard to some aspects of contracts bearing on the acquisition of a right to use real estate for a limited period of time (*time sharing*), health reform and patient's rights, consumer rights in contracts concluded with professionals, etc.

- Such laws are: Government Ordinance no. 21/1992 of 21/08/1992 on consumer protection; Law on consumption code (law no. 296/2004), Government Ordinance no. 107 of 30 July 1999 on the activity of marketing tourist package holidays (which transposed the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours); Government Ordinance no. 130/2000 of 31/08/2000 on the protection of consumers in the conclusion and execution of distance contracts (republished, currently repealed by the Emergency Ordinance no. 34/2014 of 04/06/2014 on consumer rights in contracts concluded with professionals, as well as for the amendment and completion of certain normative acts, which transposed the provisions of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on consumer protection in the context of distance contracts); Law No 365/2002 on electronic commerce, which transposed Directive 2000/31/EC on certain legal aspects concerning information society services, in particular electronic commerce in the internal market; Law No 365/2002 on electronic commerce, which transposed Directive 2000/31/EC on certain legal aspects concerning information society services, in particular electronic commerce in the internal market; Law No 304/2003 on universal service and users' rights with regard to electronic communications networks and services, which transposed Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights with regard to electronic communications networks and services (Universal Service Directive); Law No 289/2004 on the legal status of consumer credit agreements for consumers natural persons, which is currently repealed by GEO No 50/2010, which transposed Directive No 87/102/EEC of 22 December 1986 for the harmonisation of legislative, administrative and regulatory provisions on credit for consumption, as amended and supplemented by Directive No 90/88/EEC of 22 February 1990 and Directive No 98/7/EC of 16 February 1998; Law nr. 282 of 23 June 2004 on the protection of purchasers in respect of certain

aspects of contracts relating to the acquisition of a right to use immovable property for a limited period of time which transposed Directive 94/47/EC on the protection of purchasers with regard to certain aspects of contracts bearing on the acquisition of a right to the partial use of immovable property (*time sharing*).

- Currently, Law nr. 282/2004 was repealed and replaced by the Government Emergency Ordinance no. 14 of 16 February 2011 for the protection of consumers in the conclusion and performance of contracts for the acquisition of the right to use one or more accommodation spaces for a fixed period, long-term contracts for the acquisition of benefits for holiday products, resale contracts and exchange contracts, which transposed Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on consumer protection concerning certain aspects of timeshare contracts, long-term holiday product contracts and resale and exchange contracts, which in turn repealed and replaced Directive 94/47/EC.

- Patient Rights Law no. 46/2003; Law nr. 95 of 14 April 2006 on health reform; Emergency Ordinance no. 34/2014 of 04/06/2014 on consumer rights in contracts concluded with professionals, as well as amending and supplementing certain normative acts, which transposed the provisions of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing directive 93/13/EEC of the European Parliament and of the Council and repealing the Directive 85/577/EEC of the Council and Directive 97/7/EC of the European Parliament and of the Council. In that Act, Chapter II regulates "Information for consumers for contracts other than distance or off-premises contracts" and Chapter III "Consumer information and the right of withdrawal in distance and off-premises contracts".

As regards the legal consequences of the breach of the obligation to inform at the pre-contractual stage, the Romanian doctrine was based on French law (D. Chirică, * p. 299 – 301; Chr. Larroumet, 2003, p. 346 – 347; L. Pop, * pp. 296 – 298). As it is a violation of the imperative requirement of good faith, ordinary liability – tort liability – will be attracted, given that contractual liability (special liability) can occur only in the case of a valid contract concluded. The damage caused to the other party (consisting of losses and disadvantages caused by the conclusion of the contract as a weaker party due to the lack of necessary information) must be fully repaired. The fault of the contractor who has failed to fulfil his duty to inform must not be proved, because this is an obligation to result, the breach of which entails objective liability (L. Pop, 2006, pp. 62-64, 65-66; p. 298).

III. UNFAIR TERMS, STANDARD CLAUSES, NON-USUAL TERM

The theory of unfair terms is, according to the doctrine, another limitation of the binding effect of contracts, an example of the intervention of the courts in contracts (Pop, Popa, Vidu, pp. 160-161). It is a problem specific to contracts with consumers.

In this field, the Romanian legislator transposed Directive 93/13/EEC through Law 193/2000 on unfair terms. Inspired by French doctrine, (E. Hondius, 1996, p. 591 and following, R. Zimmermann, 2007, pp. 451 and following; J. Gestin,

I. Marressaux, 1993, p. 68) the Romanian authors also considered this directive to be the most important measure for the harmonization of contract law in Europe, as it concerns the very being of the contract (I.Fl. Popa, 2004, p. 194; I. Bălan, 2001, pp. 36 and following; C. Toader, A. Ciobanu, 2003, p. 78 and following). This law must be supplemented by other laws, such as the Government Emergency Ordinance no. 34/2014 on consumer rights in contracts concluded with professionals, which transposed into national law Directive 2011/83/ EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/ EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

It is also of real importance is the "Consumption Code" (Law no. 296/2004, republished in 2008). That designation might give the impression that it is the "*avant la lettre*" achievement of the proposal for a Directive of the European Commission on consumer rights, COM (2008) 614, a "codex of consumption" as in France ("Code de la consommation") or Italy ("Codice di consumo"). In reality, it is only a framework law, the purpose of which was to classify all the provisions in the field of consumer protection in the body of the law or in annexes (17 in number), as it clearly results from art. 88 of the law (Ch. Alunaru, 2010, pp. 13-30).

In Chapter III of the law, on consumer rights, we find provisions on unfair terms. Among them, an important place occupies the right to refuse the conclusion of contracts that contain unfair terms, according to the legal provisions in force.

Chapter IX on "Consumer rights in the conclusion of contracts" contains detailed provisions on unfair terms in consumer contracts.

Various other special laws transposing European directives contain provisions on unfair terms, in areas of consumer protection such as the marketing of package holidays; the conclusion and execution of distance contracts; the conclusion and execution of distance contracts on financial services; credit agreements for consumers, combating unfair practices of traders in relation to consumers, etc.

Various other special laws transposing European directives in different areas of consumer protection contain provisions on unfair terms.

- Government Ordinance no. 107/1999 on the activity of marketing package holidays which transposed the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

- Government Ordinance no. 130/2000 on the protection of consumers in the conclusion and performance of distance contracts which transposed the provisions of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in distance contracts;

- Government Emergency Ordinance no. 85/2004 on the protection of consumers in the conclusion and performance of distance contracts relating to financial services, *which transposed* the Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive

90/619/EEC and Directives 97/7/EC and 98/27/EC, published in the Official Journal of the European Communities (JOCE) No. L 271 of 9 October 2002, as well as the provisions of Article 90 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

Unfortunately, the regulation of unfair terms in Romanian law does not concern all contracts, but only those concluded with consumers. As a positive example is given the German law, where the transposition of European legislation led to a reform of the BGB, so that the provisions of art. 305 and following concern not only the relationships of professionals with consumers, but also relations between professionals (traders) (R. Schulze, H. Dörner, I. Ebert, Th. Hoeren, R. Kemper, I. Saenger, K. Schreiber, H. Schulte-Nölke, A. Staudinger, 2012).

The definition given by art. 4 of Law nr. 193/2000 unfair terms are: "A contractual term that has not been negotiated directly with the consumer will be considered unfair if, by itself or together with other provisions of the contract, it creates, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance in the rights and obligations of the parties."

According to this definition, the doctrine has established five criteria that determine whether a term is unfair:

- Absence of negotiations between the parties;
- Imbalance to the detriment of the consumer;
- Harm to the principle of good faith;
- The use of one of the unfair terms listed in the annex to the law;
- Other essential circumstances listed in Article 4. par. 5, such as the nature of the goods or services which are the subject of the contract at the time of its conclusion; all the factors which led to the conclusion of the contract; other terms of the contract or of the other contracts on which it is dependent.

As for the legal effect of unfair terms, the Romanian regulation has taken over the rules of the European directive, so that, according to art. 6 of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers "Unfair terms contained in the contract and found either personally or through the bodies empowered by law will not produce effects on the consumer, and the contract will continue to be carried out, with the consumer's consent, only if after their elimination he can continue".

This solution was criticized by the Romanian doctrine, which considered that, according to Romanian law, other sanctions such as absolute nullity (C. Toader, A. Ciobanu, 78 ff; I.Fl. Popa, 2004, pp. 213 and following) or the consideration of unfair terms as unwritten (J. Goicovici, 2006, pp. 79 and following) would have been more appropriate. Following a rich case-law of the European Court of Justice, the Romanian doctrine accepted the penalty of invalidity as the appropriate one (L. Pop, I.Fl. Popa, S.I. Vidu, p. 169, footnote 4).

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Although the regulation of unfair terms concerns only consumer contracts, the Romanian doctrine took the view that those unfair terms could also be removed from other contracts on the basis of the rules of ordinary law.

These rules include:

- defects of consent, such as "*laesio enormis*";
- the theory of the cause can lead to the removal of unfair terms, because the absence of a real and lawful cause entails the nullity of the contract;
- the requirement of good faith at the conclusion of the contract;
- the rules of transparency of the contract (transparency, clarity, intelligibility) can also be a useful tool. If the contract terms are not clear, intelligible, their content cannot be understood even on the basis of the common rules of interpretation contained in the section with this title of the Civil Code, the "subsidiary rules of interpretation" contained in Article 1269, are applied: Paragraph 1 contains a rule against *proferentem*: "If, after the application of the rules of interpretation, the contract remains unclear, it shall be interpreted in favour of the one who undertakes it." Paragraph 2 contains an application of the principle in *dubio pro reo* to adherence contracts, the typical field for unfair terms: "The provisions laid down in the adhesion contracts shall be interpreted against the proposer".

If unfair terms are regulated in the legislation on consumer protection, standard terms and non-legal terms are regulated in Articles 1202 to 1203 of the new Civil Code. The very authors of the Code pointed out in the Explanatory Memorandum that the purpose of regulating these terms was to prevent the abusive conduct of the contracting party with a superior, advantageous economic situation.

According to art. 1202, par. 2 "Standard clauses are the stipulations established in advance by one of the parties for general and repeated use and which are included in the contract without having been negotiated with the other party. Paragraph 3 of the Article provides that: "Negotiated clauses shall prevail over standard clauses", and according to par. 4 "Where both parties use standard clauses and do not reach an agreement on them, the contract shall nevertheless be concluded on the basis of the agreed clauses and any common standard clauses in their substance, unless one of the parties notifies the other party, either before the moment of conclusion of the contract or subsequently and immediately, that it does not intend to be bound by such a contract.

According to art. 1203, "non-usual clauses" means "Standard clauses which provide for the benefit of the one who proposes to limit their liability, the right to unilaterally terminate the contract, to suspend the performance of obligations or which provide for the detriment of the other party the revocation of rights or the benefit of the term, the limitation of the right to oppose exceptions, the restriction of the freedom to conclude contracts with other persons, silent renewal of the contract, applicable law, arbitration clauses or derogating from the rules on the jurisdiction of the courts". Such clauses shall take effect only if they are expressly accepted in writing by the other party.

IV. COMPENSATION FOR NON-PECUNIARY DAMAGE

Although in the Explanatory Memorandum to the Draft of the New Civil Code, the authors clearly show that among the means considered when establishing the general regime of obligations to ensure a proper protection of the subjects of law in a position of economic inferiority was also "compensation for non-pecuniary damage", within the framework of the regulation of contracts we find only one provision in this regard: Article 1531, which provides for the full reparation of the damage suffered by the creditor through the fact of non-execution, enshrines in paragraph 3 the creditor's right to compensation for non-pecuniary damage.

It therefore remains to apply by analogy compensation for non-pecuniary damage regulated in the context of tortious civil liability (Christian Alunaru, 2010, pp. 5-52). It is true that, unlike the old Civil Code, the new Code regulates civil liability in tort in much more detail and comprehensively (46 articles instead of 6 articles), the express regulation of moral damages being considered in step forward. Leaving aside the justified criticisms of the regulation of the repair of the non-patrimonial damage because it is very brief in relation to the richness of the aspects raised by the legal literature in recent years, we cannot fail to point out the contradiction between the intentions of the authors of the Code, expressed in the explanatory memorandum, and the concrete way of regulating in the texts of the Code the repair of the non-pecuniary damage suffered by the creditor through the non-performance of the contractual obligation. Even if we accept the application by analogy of the rules on tortious liability, it is clear that contractual liability has certain specific aspects with which the regulation of non-pecuniary damage in tort is incompatible. We quote by way of example, art. 1391: "Compensation of non-pecuniary damage":

(1) In the event of bodily integrity or health damage, compensation may also be granted for the restriction of possibilities for family and social life.

(2) The court may also award compensation to ascendants, descendants, brothers, sisters, and husband, for the pain caused by the death of the victim, as well as to any other person who, in turn, could prove the existence of such damage.

(3) The right to compensation for violations of the rights inherent in the personality of any subject of law may be assigned only if it has been established by a settlement or a final court decision.

(4) The right to compensation recognised under the provisions of this Article shall not pass to the heirs. However, they can exercise it if the action was initiated by the deceased.

(5) The provisions of Articles 253 to 256 remain applicable (these are non-pecuniary means of defence that can be requested from the court, *our specification*).

CONCLUSIONS

From the above, it results that the change of the economic, social, and political realities in the 200 years since the promulgation of the French Civil Code, which was the source of inspiration of the Romanian Civil Code, has led to a fundamental

change in the general theory of obligations as well. In addition to the old theory of autonomy of will, creation of the school of natural law, founded on political and economic liberalism, an expression of individualistic philosophy of the XVIII century, the principle of contractual solidarity has made its way. The creditor is no longer the master of the contract, but he also has a duty to collaborate. The contract has become a kind of microcosm, a small society where everyone has to work for a common purpose that is the sum of the individual goals pursued by each. The lawmaker and the judge increasingly intervene in contracts, the first by mandatory rules (instead of alternate ones), the second to ensure contractual balance when it is disturbed.

Although the purpose of protecting parties in a position of economic inferiority is expressly declared by the authors of the new Civil Code, the legal provisions dedicated to this purpose are few and widespread throughout the Code. Much clearer and more detailed rules are contained in the special laws transposing into national law the European directives in the field of consumer protection. Perhaps the regulation of this field outside the Civil Code is an advantage, because this area is particularly dynamic, constantly developing, and the regulation within the Code would have caused a permanent addition, modification, and eventual renumbering of the articles of the Code.

BIBLIOGRAPHY

- More detailed explanations on this topic: Chr. Alunaru, L. Botos, *Das Kaufrecht in Rumänien nach dem neuen ZGB* (The Sales Agreement in Romania according to the New Civil Code), Chapter III., C. „Rechtlicher Schutz der Willenserklärung. Vorbeugungsmaßnahmen zum Schutz der Willenserklärung. Aufklärungspflicht der Vertragsparteien” (Legal Protection of the Will Expression. Preventive Measures for the Protection of the Will Expression. The Contract Parties' Obligation for Information), Publishing House Nomos – facultas.wuv, Vienna, 2013, p. 60-65.
- Alunaru Christian, *Erwägungen zum Schmerzensgeldanspruch im gegenwärtigen rumänischen Zivilrecht* (Consideration on Moral Damage– praetium doloris- in Contemporary Romanian Civil Law), in *Studia Universitatis Babeş-Bolyai* series *Iurisprudentia* no. 4/2010, (online), pp. 5-52.
- Bălan I., *Clauzele abuzive din contractele încheiate între comercianți și consumatori* (Abusive Terms from the Contracts Concluded between the Traders and the Consumers) in *Dreptul* (The Law) 6/2001, pp. 36 and following.
- Chirică D., *Tratat de drept civil. Contracte speciale. Volumul I Vânzarea și schimbul* (Treaty of Civil Law. Special Contracts. Volume I Sale and Exchange), Publishing House C.H. Beck, Bucharest 2008, pp. 284.301.
- Hondius E., *La Directive sur les clauses abusives et les États membres de l'Union Européenne* (The Directive on the Abusive Terms and the European Union Member States), in J. Ghestin/M. Fontaine, *La protection de la partie faible dans les rapports contractuels* (The Protection of the Inferior Party in the Contract Relations), Librairie Générale de Droit et de Jurisprudence, Paris 1996, pp. 591 and following.

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- Ghestin J., Marchessaux I., *L'élimination des clauses abusives en droit français à l'épreuve du droit Communautaire* (The Removal of the Abusive Terms in the French Law at the Influence of the Community Law), in Rev. Eur.dr. cons., 1993, No. 2, p. 68.
- Goicovici J., *Dreptul consumației* (Consumption Law), Publishing House Sfera juridică, Cluj, 2006, pp. 79 and following, pp.157-178.
- Larroumet Chr., *Droit civil. Les obligations. Le contrat*, (Civil Law. The Obligations), Economica, Paris, 2003, pp. 346-347.
- Moise, in Baias, Chelaru, Constantinovici, Macavei, (Hrsg), *Noul Cod civil. Comentariu pe articole* (The New Civil Code. Comment on Articles), (2012), Art. 1184, Rz 6.
- Pătulea V., *Obligația de informare în formarea contractelor* (The Obligation to Inform in Contracts Formation), in Revista de Drept Comercial (Journal of Commercial Law) No. 6/1998, p. 77 and following.
- Pop Liviu, Popa Ionuț-Florin, Vidu Stelian-Ioan, *Tratat elementar de drept civil. Obligațiile conform noului Cod civil*. (Elementary Treaty of Civil Law. The Obligations according to the New Civil Code). Publishing House Universul Juridic, Bucharest, 2012, p. 93, p. 171, pp. 160-161, p. 169, footnote 4.
- Pop L., *Tratat de drept civil. Obligațiile*. Vol. I. Regimul juridic general (Treaty of Civil Law. The Obligations. Volume I. General Legal Regime), Publishing House C.H. Beck, Bucharest, 2006.
- Pop Liviu, *Tratat de drept civil. Obligațiile*. Volumul II. Contractul. (Treaty of Civil Law. The Obligations. Volume II. The Contract) Publishing House Universul Juridic, Bucharest, 2009.
- Popa I.Fl., *Dolul și obligația de informare în contractele sinalagmatice* (Fraud and the Obligation to Inform in Bilateral Contracts), in "Dreptul" (the Law) No. 7/2002.
- Popa I.Fl., *Reprimarea clauzelor abuzive*, în *Pandectele Române* (Repression of the Abusive Clauses in Romanian Pandects) 2/2004, p. 194, pp. 213 and following.
- SchulzeR., H. Dörner, I. Ebert, Th. Hoeren, R. Kemper, I. Saenger, K. Schreiber, H. Schulte-Nölke, A. Staudinger, *BGB Handkommentar*, 7. Auflage (Pocket Comments on the German Civil Code, 7th edition), Publishing House Nomos, Baden-Baden, 2012. Introductory Note at §§ 305-310, marginal notes 5-7 and §310 „Anwendungsbereich“ (scope), marginal notes 1-2.
- Terré Fr., Simler PH., Lequette Yv., *Droit civil. Les obligations*. (Civil Law. The Obligations) Dalloz, Paris, 2005.
- Toader C., A. Ciobanu, *Un pas important spre integrarea europeană: Legea nr. 193/2000 privind clauzele abuzive, Ordonanța Guvernului nr. 87/2000 privind răspunderea producătorilor și Ordonanța Guvernului nr. 130/2000 privind contractele la distanță* (An Important Step towards European Integration: Law nr. 193/2000 on unfair terms, Government Ordinance no. 87/2000 on producer responsibility and Government Ordinance no. 130/2000 on distance contracts), in Revista de drept comercial (Journal of Commercial Law), 7/2003.
- Zimmermann R., *Le droit comparé et l'européanisation du droit privé* (Compared Law and Europeanisation of the Private Law), in Revue trimestreille de droit civil 2007.
- Alunaru Chr., *Der Konsumentenschutz in Rumänien* (Consumer Law in Romania), in Rudolf Welsch (editor.) *Konsumentenschutz in Zentral- und Osteuropa* (Consumer Protection in Central and Easter Europe), Publishing House Manz, Vienna, 2010.