

CONSIDERATIONS ON THE RELATIONSHIP BETWEEN PRODUCER AND CONSUMER ON FOOD MARKET

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Abstract

Perhaps one of the largest legislative climbing in recent years is shaped by the instruments that Romanian legislator puts at hand in order to protect its consumers from potential abuses of the producer. The importance of rules of such liability producer is justified primarily by the fact that a modern democratic society, consumer protection has become an essential part of the whole system of social protection. Moreover, the consumer's right to health and safety of its community is a constitutional principle, a consumer is considered by the Community forums as a new form of citizenship.

Keywords: *producer, consumer, food market, provider, protection*

Introduction

The desiderate that the offer issued by the producer and accepted by the consumer to be as agreed between the parties, remained often an illusion, so that, through domestic and international legal instruments are provided, on the one hand, guarantees that for lack of sufficient consumer products conform it to have a partial or complete repair of the damage suffered by negligence product producer or service to access it, on the other hand, if there legislative means that protect consumers, the producer will have more care on the quality of marketed products.

In this paper I intend to analyze the legal framework through which is the incidence of domestic producer responsibility for food quality, beginning with the analysis of concept as producer, consumer and relationship between them. It is important to understand that acceptance of Romanian legislator gave such notions, as the only way we will be able to evaluate the actions of state, theoretical and practical solutions proposed for removal from the market of individual consumers posing, users and public. Producer responsibility for the quality of food placed in the center of the idea of security products in the circulation and thorough study of the mechanisms involved in binding its producer and similar persons.

Content

Concept of producer

The current sense, the producer shall mean that person by his work, creating goods, scientific or artistic value¹. Based on the producer type near term and reaching specific difference, we might say, the producer of food, means a person who by his labor to produce food themselves or others.

However, the term "producer" has a rather broad sense, going into this class operators in a broad sense, however, and persons holding capacity of the seller or dealer, trader manufacturers were considered producing a finished product or component of a product, the raw material manufacturing, who apply their name, mark or other distinctive sign on products, who reconditions the product, trader or distributor, by his conduct change product features, representative of a registered trader who

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¹ dexonline.ro.

not established in Romania or in his absence, the importer of the product trader who import products in order subsequently to an operation selling, renting, leasing or any other form of distribution, the distributor of the imported product, if not importer knows, even if the manufacturer is listed, the product distributor if the importer can not be identified, unless you notify the person aggrieved within 30 days to request the identity of the importer².

In a synthetic definition, we can say that producer is the manufacturer of a finished product, the producer of any raw material or a component manufacturer, and any person who, by putting his name, trade mark or other distinctive product presents as its producer. But, in a careful analysis of the provision of Article 3 of Law across 240/2004, noted that security must be extended to all those involved in production and distribution of product on the market, taking into account in determining liability both work real producer, and that of the apparently.

In this context, and considering the meaning given by law the concept of producer, we can easily imagine situations where the producer, as defined by law can not be identified, in which inherent next question is: who will be responsible for any effects harmful product put on the market? Liability is the responsibility of each provider who fails to notify within a reasonable time damaged consumer identification producer or the person who supplied the product. In other words, we can say that operates a transfer of responsibility from the producer to the supplier, each supplier of the product that created the harm, being treated as a producer, consumer harmed if he did not communicate in a reasonable time, data identifying the manufacturer or the person who supplied the product; same is true in the event that we are dealing with an imported product that affect food safety, if the product does not indicate the importer provided, even if said producer name.

This interpretation of legal provisions resulting from the linking of art. 2 of Law 240/2004 with those of Article 2 of Law nr.321 of 15.10.2009 which is the law in matters of food marketing and supplier defined as "*person or entity authorized to engage in production, processing or food distribution to marketing.*" In other words, in the Law nr.321 notion is analyzed by the manufacturer, but only that the provider that involves the producer, can speak about identity in defining the two concepts. We disagree with this view, saying that the distinction between the concept of manufacturer and supplier that is the proximate genus which is the producer the specific difference that is given to the concept of provider, as any producer and supplier can be but not every vendor can be a producer. Specific activity is the manufacture of the product manufacturer while its distribution is characteristic for the work done by the supplier. Certainly the two activities, production, distribution that can be found in the remit of the same person, but in the meantime can target different people, the producer being the person in charge of all aspects of production until such time that reach the final product, while the supplier is one who takes food marketing activity respect the finished product. However, the two activities, namely manufacturing and product distribution must be made in a professional, profit-making activities, which is why the marketing of product is essential for the approach of a potential liability.

Concept of consumer

The consumer is central pawn production activities, distribution and consumption. Economic activity is based around the consumer, which is the ultimate recipient of all spheres of production.

In other words, is what determines consumer market competition between various producers, whereas, in relation to personal needs and the knowledge about the products on the market, the consumer is opting for a product against another, he enjoying the certain rights to all the high principles of the Consumer Code (Chapter III), namely:

² Alice Mariana Apetrei, *Notiunea de consumator in Regulamentul (CE) nr.583/2008 al Parlamentului European si al Consiliului din 17 iunie 2008 privind legea aplicabilă obligatiilor contractuale (Roma I) si, respectiv, in legea română (Codul Consumului –Legea nr.296/2004), Dreptul nr.1/2011, p.158.*

a) the right to be protected against the risk of purchasing a product or a service are likely to prejudice the life, health or safety or affect their rights and legitimate interests;
 b) the right to be informed fully, fairly and accurately on the essential characteristics of products and services so that they adopt decision on them to meet their needs better and to be educated as consumers;

b) the right of access to markets that provide a wide range of quality products and services;

c) the right to be compensated for damage caused by poor quality of products and services, using for this purpose means provided by law;

d) right to organize associations for consumer protection in order to protect their interests;

e) the right to refuse signing contracts containing unfair terms in accordance with the law;

f) the right to not be prevented by an operator to obtain a benefit provided by applicable law;

The definitions in the literature, the consumer shall mean, on one hand "the person who consumes goods from production"³, on the other hand, "the person who buys for his own goods offered by manufacturers in the free market, competitive"⁴.

Based on the two meanings of the notion of consumption, it outlines two theories that essential element consumer, objective theory, that the subjective theory.

The objective theory, the notion of consumers include all natural or legal persons, entered in this field "producers, manufacturers, traders, the traders generally purchasing goods for their activity, buyers of products for their particular use, simple passer-by who have a relationship with the product, but have suffered damage as a result of its defective character."⁵ Therefore, according to this view, all persons are protected against manufacturer launches market risk products for consumers use. I appreciate that this view requires some qualification, meaning that not all people are consumers but those who had a connection with the product improperly, directly or indirectly. As such, the mere passing of speaking this theory becomes the consumer and therefore enjoy the protection of law only insofar as the risks and consequences of product produced directly or indirectly have effects on him. Thus, we can not include in the consumer category passers person who does not even aware of that product on the market.

Subjective notion of consumer theory associated with the processes of acquisition, possession or use of goods or services for private purposes. In other words, as stressed by the French specialist legal literature, consumers are "people that purchase or use goods or services for something unprofessional, or for their personal use"⁶.

Therefore, unlike the objective theory that identifies the consumer with any person, subjective theory establishes two rules for determining the consumer of other people: on the one hand, the person to acquire, possess or use a good or service, on the other hand, acquisition, possession or use of goods or services to be performed privately. Subjective theory and joined the Romanian legislature intended to define when the consumer as "any natural or legal person who

³ Vasile Breban, *Dictionar general al limbii române*, Bucuresti, Ed. Enciclopedică, 1992, p.208, in Benonica Vasilescu, *Politica de protectie a consumatorilor – componentă a politicii de protectie socială*, Buletin de informare legislativă, nr.4/2008, p.16.

⁴ Le Petit Larousse Illustre, Paris, Larousse, 1995, p.262.

⁵ Benonica Vasilescu, *Politica de protectie a consumatorilor – componentă a politicii de protectie socială*, Buletin de informare legislativă, nr.4/2008, p.16.

⁶ Jean Calais-Auloy, *"Droit de la consommation"*, 3-e edition, Paris, Dalloz, 1992, p.3.

buys, acquires, uses, and consume food outside professional activity⁷" or "individual or group of individuals acting purposes outside his trade, industrial production⁸, craft or profession".

Therefore, according to the subjective theory to acquire the consumer and thus qualify for protection in this matter, a person must meet two conditions:

1. to be an individual person, legal person can not be a consumer. As such, in relation to the subjective theory embraced by the Romanian legislation in the field, in the notion of the consumer are included only individuals or groups of individuals who sign a contract outside of their professional activity. In that the groups of people who appreciate that the text is in association aims to protect consumers associations and not any associations. As such, consumers only have the status of associations to defend and protect consumer interests.

2. individuals to purchase, acquire, use or consume products or services outside their area of professional activity. Therefore have the status of consumers are protected from individuals who buy, acquire, use the products for consumption. In other words, if people buy some goods for personal consumption but not for resale, for example, they will not be qualified as consumers will not enjoy protection in this regard. Moreover, the hypothesis stated above can attract even their liability if they distribute such products on the market which caused further adverse consequences for human health.

We believe that the reason why the legislature included in the consumer sphere only people who purchase goods for consumption is that if products are purchased by individuals in their professional activity, they have enough knowledge to properly assess purchased the product complies with current laws.

The activity of legal persons, whatever form of organization (companies, autonomous, nongovernmental organizations, public institutions) is oriented towards profit or provision of other essential services of public administration, issues that lead to exclusion them from the notion of consumer.

I appreciate this provision objectionable and discriminatory normative grounds that can easily imagine situations in which legal entity in its outside professional activity may have a consumer. In this context the natural question arises about the reason that the legislature did not intend to include in the scope of consumer and legal person. In other words, by excluding individuals notions of consumer legal sense, means that, in those situations in which legal entity acquiring property outside his business, it enjoys no protection?

I think the answer can only be negative, meaning the legislature to protect the individual normative provisions establishing a number of its rights and obligations of the manufacturer, as appropriate seller, by special law in order to give greater liability of persons guilty of making efficiency market rigors of legal non-conforming products.

In this context, given that the legal consumer can not appreciate that, for situations in which it is involved in legal relations with the producers, the latter will be liable for defects of things sold under the Civil Code, specifically the provisions governing the contract of sale.

Although both in law and in the international concept of "consumer" is considered only natural, reading the provisions of Law 321/2009, note that the concept of consumer is defined as "any person or entity that buys, acquires, uses and consume food outside professional activity". As such, consumers in food can be both natural and legal person, provided they acquire, use and consume those products outside the scope of professional activity.

While recognizing that the consumer means a natural person who uses the particular purpose and unprofessional, products and services offered on the market for manufacturers,

⁷ art.2 alin.2 pct.5 din Legea nr.321 din 15 octombrie 2009.

⁸ the professional activities of the Romanian legislator understood trade, industrial production, craft or profession, through this list legislature intended to limit the scope of commercial activities, in addition to those listed can be included in any other activities related to the performance of.

retailers and service providers, the natural question arises whether the consumer is not the same person with the buyer? We appreciate that despite legislation in the content which the two notions are confused, we can not sign identity between the two, whereas the term includes the consumer, a buyer may be situations in which a consumer acquires an asset in other ways than buying it. Consumption good can result not only from a contractual relationship, but also a legal relationship on which the owner has not expressed willingness.

Conclusions

Attempt to regulate internal concepts of producer, consumer, food by reference to international law. But I think that the current Romanian legal system is not yet adapted to the needs of society, is, not infrequently contradictory (and I mean to provide the sense notion of consumer) and often incomplete.

Confusion and contradictions that arise in regulating various acts of the same concepts (for example, in Act 240/2004 consumer can only be natural for the body of law 321/2009 to meet the legal person as a consumer).

I think that these inaccuracies are from correlated transposition of Directives into national law instead of making extensive doctrinal discussions on the subject.

References

- Apetrei, Alice Mariana, *Notiunea de consumator in Regulamentul (CE) nr.583/2008 al Parlamentului European si al Consiliului din 17 iunie 2008 privind legea aplicabilă obligatiilor contractuale (Roma I) si, respectiv, in legea română (Codul Consumului – Legea nr.296/2004)*, Dreptul nr.1/2011
- Auloy- Calais Jean, *”Droit de la consommation”*, 3-e edition, Paris, Dalloz, 1992
- Breban, Vasile, *Dictionar general al limbii române*, Bucuresti, Ed. Enciclopedică, 1992
- Le Petit Larousse Illustre, Paris, Larousse, 1995
- Vasilescu, Benonica, *Politica de protectie a consumatorilor – componentă a politicii de protectie socială*, Buletin de informare legislativă, nr.4/2008
- Legea 321/2009 privind comercializarea produselor alimentare, publicată M. Of. N. 705 din 20 octombrie 2009