

GENERAL ASPECTS AND PURPOSE OF THE CONSUMMATION CONTRACT

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Abstract

The current paper mainly tackles the consummation contract and the ways in which it forms, adjusts and helps the citizen, in the general frame of the consumer's rights. The consummation contract is a legal instrument for institutionalizing the commercial operations between a professional and the consumer. This type of instrument has been especially created to help the citizen in being adequately treated both correctly and adequately in all consummation matters. In the 20th century, the need to bring the commercial relations between professionals and citizens under regulation became imperative. Taking into account the socio-humanistic development rhythm, the consummation contract became a way of guaranteeing for the citizens' rights in consummation matters and, at the same time, it confers a legal frame to guide and direct the merchants.

Since 2007, the year when Romania adhered the European Union, the consumers' rights became even more important, as the fact that the European Union focuses on the rights of all its citizens and the way in which they are treated by the merchants from a commercial point of view, was widely recognized. Once Romania adhered to a commercial frame which embeds over 500 million inhabitants, the dimension of the rights and obligations regarding consummation became an ever stronger argument in bringing the legislation under regulation.

Eventually, clarifying the principles that founded the consummation contract will determine the legal frame in which it revolves and will bring to light the utility it has for the citizens, its subsequent employments and all things that should be further added to it in order to ensure an even better protection and settlement, in legal terms, of the commercial relations between a merchant and one or more citizens.

Keywords: consumer, contract, citizen, professional, European Union.

1. First words on the consummation contract

It is considered that between a consumer and a professional there is, and there will always be, an uneven forces rapport. In order to make the commercial relations level even for both parties and to offer them a legal frame in which they can both deploy their activities, the consummation contract has emerged.

It all starts with the professional's offer and the consumer's request. The latter expresses the consumer's will to buy the good or the service that is commercialized, while the professional's offer guarantees that the good or service observes all the parameters that have been agreed upon, by means of the contract. Any person endowed with a judicial ability has the right and is free to conclude a consummation contract, which is in full conformity with the effectual laws, and they cannot be detained by any exterior force. The agreement between parties, followed by the observing of the specific terms requested by law, and called "validity terms", convert a simple understanding into an object with a judicial character, and it becomes a consummation contract.

Once concluded, the consummation contract becomes effective and produces rights and obligations, as it represents a judicial rapport between the involved parties, which become contractual parties. [1]

2. Legal determination and presentation of the consummation contract

The consummation contract has many definitions but, formally, it is a judicial instrument. It represents the free will of both the professional and the consumer for establishing a commercial transaction, with and economic finality, in which the professional provides a good or service for commercialization, which the consumer wants to purchase.

The object of the contract must be clearly sated, it has to be determined by and observe the conditions, in order for it to be considered a licit right.

Based on this link between the professional and the consumer, the law clearly decreed the attributions, rights and obligations of the parties, so that they are on a plain level and that the consumer's rights won't be limited or broken. For that matter, if we stop to think what a professional is, we can imagine a merchant with a technical expertise of the product he provides and who knows all the elements of the good or the product he offers for the eventual consumers to purchase. On the other hand, it is probable that a consumer may not benefit from a technical expertise, or from any experience concerning the good or service he is bound to purchase. The consummation contract is, in its essence, conferred by the law to help the consumer to protect his rights, to be treated correctly and to have the possibility to get to know all the aspects of the good or service he is to purchase. [2]

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We cannot say a consummation contract has its own judicial nature, when determining it. It can be regarded as an instrument that helps bringing the commercial rapports between the parties under regulation, and it is adjusted to fit the type and nature of the good or service that is offered for commercialization. Taking all these regulations into account and based in the fact that it does not have its own judicial nature, we can say that it cannot fall under the category of special contracts.

Through its form, the consummation contract represents a civil law contract.

But how can we exactly assert that this type of contract offers protection to the consumer? Firstly, the consummation contract ensures the correct information and the full knowledge regarding the characteristic and essential data on the product or good the former is bound to purchase. The law specifies and carries that the professional should offer the consumer free access to all the information about the good or product, data that should be at the consumer's free disposition. The main information should include the product's characteristics, the means of payment and delivery.

In case the contract does not observe the validity terms, it can be struck as invalid. Thus, it cannot be said that the contract has been concluded.

When referring to the consummation contract, we can also talk about principles. There are principles that represent the basis in concluding such a contract and also, there are principles that stand at the base of the contract itself such as the liberty to conclude a contract, the fraternity between parties the equality of the parties. All these principles are imperative for a good deployment and conclusion of a consummation contract. The contract's conclusion in positive terms is supported by the effectual law, which is specially designed to infer the rights and obligation of each party, in relation with the other, as well as with the national institutions that supervise on these laws being fully observed.

Based on all these regulations and norms we can say that the consummation contract carries out a judicial and economic purpose and, last but not least, a social one. The consummation contract is a consumerist instrument which both merchants and consumers are bound to make use of.

3. The actual form of a consummation contract and its particularities

Through its nature, the consummation contract implies the existence of two parties, the professional and the consumer.

The professional is defined as the economic part, who offers a good or service for commercialization, or as an economic operator. Thus it is either a physical person, or a legally authorized person who can pursue the following activities: transportation, commerci-

alization or storage of a certain type of goods or services.

On the other hand, the consumer can be any physical person who acts outside their economic and commercial purposes.

3.1. The contract's form and the parties roles

As we have previously mentioned, for any sort of agreement between the two parties there has to exist, first and foremost, a willing agreement between the two.

In case the will is displayed by both parties, then the agreement leads to one of the three existent forms of contract. [3]

The first form is that of compulsory contracts, where the terms are essentially the ones regulated by the law, the conditions are clearly delimited and the attributions and responsibilities of both parties are specified. [3]

The second form is that of the negotiated contract. This is a form of contract which is not concluded too often for transactions between professionals and citizens and it represents a classic contract, as it infers all the standard elements of the agreement between two or more parties, for a commercial purpose. [3]

The third form is represented by the liability contract, which is a form that is specific for the majority of commercial contract concluded between a professional and consumer. The general aspect of this form of contract is that more often than not the liability contract will be exclusively written by the merchant and the consumer does nothing more than giving his written consent. [3]

We can even say that the liability contract involves certain unilateral elements that may injure the consumers' rights. In some cases, as the contract is previously drawn up exclusively by the merchant, the consumer might find himself in a situation where he is forced by the circumstances to agree to some terms he would normally not agree to. [3]

In these cases, when the consumer's rights are injured, we can talk about abusive terms which are imposed by the economic operator, which are designed to keep the citizen from benefiting from all the rights the law provides them with. A good example is the right to compensation, in case the product or service that is provided by the merchant does not observe the conformity rules and when the merchant refuses to deliver the product for the consumer to make use of it. In these cases, the terms that are unilaterally imposed by one of the parties can be considered to be completely invalid. The infringement of any right of the citizen to being treated in a correct and balanced manner in a contract is strictly forbidden by the law 240 / 2004 regarding the consumer's protection and by the European directives regarding the citizens' rights in matters of consummation contracts 85 / 375 / CEE and 1999 / 34 / CEE. [4][5][6]

As we have previously stated, the willing agreement is imperative for both parties, so that such a contract should be concluded. At the same time, the legal dispositions work especially for protecting the citizens from any eventual abuse or legal breaches that might be exploited by the professionals in order to fringe the consumers' rights to an equitable and fair treatment and to a good conclusion of the contract that should benefit both parties. [7]

By applying some terms that may seem a little restrictive, equality and balance between the contractual parties is reached, which guarantees the obeying of legal norms by all parties. The consummation contract is considered to be itself an instrument that guarantees the parties equality.

Its utilization represents both a social and a commercial instrument, designed to establish a balance between the technical expertise of a professional and the limited means a consumer has for protecting their own rights.

3.1. The consumer's rights and the contractual provisions

A contract should clearly state all the details and specifications of the product of service that is being commercialized. This information should be expressed in a clear, non-equivocal manner and with no ambiguity, and the levied price should be mentioned.

In case the contract contains any ambiguity or, if the case be, it includes some terms which do not state clearly the rights and obligations of each party, the respective provision will act to the consumer's benefit. [8]

These are the abusive terms. As previously stated and abusive provision is a contractual term that was not open for negotiation to the consumer and it embeds or specifies an infringement of the consumer's right to contract implementation, of their civil rights or to the detriment of his judicial, social or economic interests. This type of provision breaks the good faith principle and that of the contract's balance and it applies the consumers and professional's rights and obligations in an uneven manner.

An abusive provision can be identified as one that has not been negotiated by the consumer and that has a significant influence in the implementation and execution of the contract. [9]

A good example could be a provision which infringes the consumer's right to unilaterally denouncing the contract.

In most cases, the consummation contract can be perceived as a set of rights that the citizen, or the consumer, has:

- the right to clearly knowing the contractual provisions;
- the right to know the exact price they are bound to pay to the professional;
- the right to a technical support in case of any flaws or failures;
- the right to compensation for any prejudice

caused by a product that did not observe the conformity terms in the contract;

- for any bank product, the right of being exonerated from paying for the goods or services which have not been included in the contract;
- for any bank product, the right to receiving a written notification, in a term of at least 30 days, in case any change regarding prices and commissions should occur;
- the right to turn to the authorities, when they consider they have not received a fair treatment;
- the right to a fair and equitable treatment, concerning the contract, without being imposed any provision that may be considered unfair or abusive. [9]

All these rights represent a consumer's liberties regarding consummation contracts. At the same time, the infringement of any of these rights can be seen as an abuse or, if the case be and if it has been drawn up as a contractual provision, it can be seen as an abusive provision. In order to fight this type of practices, law 363 / 2007, a law that refers to commercial practices that are unfair towards the consumer, was issued. [10]

4. Legal European climate in the matter and possible development for the future

As far as the general dogma is concerned, nowadays, the European Union applies and also requires the member states a high degree of enactment in the matter. Together with the European directives, the member states are encouraged to apply a law that is comparable to the European law in this matter.

Directive 97 / 7 / CEE of the Parliament and the Council, from 20th May 1997, brings under regulation the European specific conditions for concluding a commercial contract between a consumer and a professional. This directive was issued as a continuation of directive 85 / 55 / CE, the first directive concerning the protection of consumers' rights to be enacted at European level.

Starting from 13th of June 2014 the changes that have been made to the European Law in this matter, through directive 2011 / 83 / CEE, became effective for all the member states. From the beginning of June 2014, the regulations of the European directive became effective for all the member states. The states of the European Union had 2 years, until the end of 2013, to apply the European directive to their national legislations. [11]

Here we can note some changes that have been made in this area in order to harmonize the social economic environments of all the member states. Just like the past provisions, the present directive has a significant impact on national regulations regarding the consummation contract. Taking into account the 21st century and the fact that the economic and social environments are undergoing a continuous change, the European Union approaches the new services and products which are designed for the European consumers.

4.1. The European Union and the consumers' rights regarding consummation contracts

The provisions brought changes to online transactions and hidden costs that may occur to the consumers' prejudice: the consumer's refunding, by the merchant, in case the former returns the product in a term of 14 days from the online purchase of the good or service; the introduction, at European level, of a form designed for consumers who want to retract from a distantly concluded contract.

Another major change is made regarding credit card transactions and the contracts that have been concluded and paid for using credit cards: the removal of any additional costs the consumers were charged by the economic operator. This was seen as an abusive provision that unilaterally forced the consumer to pay for some charges that were unknown to them and that were not agreed upon when concluding the contract; the obligation to include additional information regarding additional costs in case of returning a purchased product.

Once the new changes to the European law became effective, the rights and obligations that sprung from a consummation contract became more and more well-determined and precise. The new regulations also stated that the consummation contracts had to include the geographical address of the selling facility, not only that of the social headquarters, the levied prices, delivery costs and any additional costs that may eventually occur.

The new provisions are mainly designed for distantly concluded contracts and online transactions. The online commerce underwent a great growth in the past years, which made it desirable and, at the same time, necessary a clear regulation that should offer a wide spectrum regarding commercial transactions between the European professionals and consumers. One of the main development directions was the mere growth that has been enlisted in electronic commerce and in the system of electronic payments. Thus the need for optimizing and adjusting the legislation in the matter became imperative as the consummation contract had to maintain its optimal utility and functionality, in the era of digital technology.

The socio-economic climate underwent major changes in the past years, some that have altered the relations between merchants and consumers, as well as the relations among all consumers and the way in which they could manifest and bear their rights and interests, by means of the effective laws and legislation. Together with the recent difficulties that occurred in the European economic environment, which affected the member states, nowadays the main focus is on the citizen and the way in which he has to be fairly, correctly and equitably treated. In what the transactions and contracts are concerned, they have to benefit from both the knowledge and the certainty that the effective legislation will allow them to conclude a contract that will be observed, that will be fairly

applied and that will be guaranteed, based on the effective laws and legislation.

4.2. Present and future, internally and at the European level

As we have previously seen, in the case of the effective European legislation, that of the changes that have occurred and that of the national legislation, consumerism is a symbol of both internal and external development. The necessity of helping the socio-economic climate towards a sustainable and balanced development has pushed the Romanian legislator to look at the contract, and especially the consummation contract, as a civil instrument that must have the possibility of being applied efficiently and with great responsibility by any citizen who manifests their will, determination and liberty to conclude such a contract. [12]

Internally we can notice the regulation's effects through a better integration of all legal aspects regarding commercial transactions. The consummation contract is entirely of European inspiration. Its application and perpetual change keep up with the Romanian society. It is a legal instrument that offers direction to all citizens in the free market.

Externally we can note the European legislation vision. The approach here is much wider, as there is a necessity to adjust and harmonize the legislations of the member states, towards a common system, that can be applied to all of them. This necessity occurred because of the main principles of the European Union: the principle of capital, goods and people free circulation. Thus we have a market that embeds more than 500 million citizens, who are as well consumers that need help and guidance towards a fair and efficient behavior in all commercial operations they are involved in.

In the eventuality of future changes, there are some focus areas, regarding the legal provisions, which may occur, as it is mainly underlined by the human development factors in the most important areas where the society has made some progress in the past years.

The administration and online transaction resources are still put to doubt, even after the latest national and European changes. The consumer's possibility of owning the complete control over any contract he concluded in a virtual environment is still highly doubtful. Also, the discrepancies that may occur between the specifications of the commercialized products and the way they are presented are still put to doubt and can have a negative impact on the consumer. The online environment still has some elements that are not clearly perceived by the consumer.

This is where some beaches of their correct information occur, caused by the merchants, and they can eventually manifest through the fact that the consumer is not completely aware of all his rights. In the most critical cases, they can occur due to weak

information and the negative aspects of the contract, like some provisions meant to infringe the consumer's right to dispose some actions, which he is entitled to, in due time, before the contract's expiration or termination.

Also there may occur some supplementary provisions, and they may occur explicitly for many banking services that are offered at European level the common and free economic space makes it possible for any European citizen to benefit from such a service, in every profile institution for any member state. At the same time, the diversity of laws in the matter makes it possible hiding the consumer's rights and some before-hand information they may receive. In this case, we can talk mainly about coordination between the European Union and the member states, concerning the possibility of a common solution, at a communitarian level, which would subsequently be adapted and harmonized with the national laws of the member states.

Another point present of interest is represented by the provision and distribution of electricity, gas and water towards the consumers. Even of the effective regulations include clear approaches regarding the conditions in which a contract can be concluded, these conditions can at most be general, and they are unable to tackle a specific case with a high complexity.

To sum up, we can say that nowadays a consummation contract provides the consumer with the possibility benefits and to act efficiently in any commercial transaction they conclude. The changes that may occur in the future will be determined on some analysis based on the application and utilization of this contract in different cases, from an economical, judicial and temporal point of view. The changes that will be made so that it better serve the citizen's interest are to be determined by the reaction and evolution of the social, politic, economic and judicial climates, internally and at European level.

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