

HARMONIZATION OF THE CONSUMER CONTRACT DISPOSITIONS WITH THE GENERAL CONTRACT RULES

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Abstract

This work contains and mainly tackles the contract of consumption, its differences and similitudes to a general contract, manners of applying it, and the way in which the former can be better coordinated and correlated to the general contracting terms, established by the civil law. Along the years, the consumption contract has undergone several addenda and it has come to represent an instrument of both reference and regulation for the socio-economical relations between two parties who have a commercial agreement. The general law frame has had a great influence in the development of the consumption contract, as well as on its applicability conditions and its manner of deployment. Through the development of the judicial law concerning the contract of consumption, this type of agreement has influenced, through its human and social nature, both the general contract, and the specific frame it relates to.

The relationship between the two types of contract is one of interdependence, which is determined by the need of judicial regulation in the Romanian and European economy. The ceaseless development of interhuman relations pushes society towards maintaining a continuous study of the advancement of specific legislation and judicial regulation.

The main purpose of this work is analyzing the general judicial frame and the way in which the differences between the general contract and the consumption one may represent a benefic and mutual influence on protecting the citizens' rights, which in the case of the consumption contract encompasses the protection of consumers' rights. Also, it will analyze the aspects that determine the manner of application and the differences that can be surmounted in order to achieve a better cohesion between these types of contracts.

Keywords: *consumption contract, contract, consumer, european legislation, civil law.*

1. General aspects of contracts

By definition, a contract represents a written agreement, concluded through the free will of two or more parties. Its main purpose is to apply and to carry out an action that had been conjunctly established by the involved parties. According to the civil law, the contract represents a legal form by means of which two or more parties determine a general frame to accomplish certain objectives and desiderata they have previously concluded on. Through its nature, a contract requires the free will of its subscribers, as well as their full awareness and comprehension of the terms, obligation, benefits and repercussions ensuing from their adherence to this interpersonal judicial regulation form.

1.1. Types of contracts

Contracts may have a simple nature, also known as consensual, which only requires the parties' acceptance, which is a solemn form that requires respecting a certain manner and legal form to carry out the contract, as well as a real form that implies the need of the object of the contract for a physical realization of the mentioned agreement.

A contract is a legal manner through which an entity relates to the legal frame in the society where it carries on its daily activity. This instrument represents a legal form which is the entity's choice as a way to protect, by means of rights insurance law, its goods and dignity.

A contract is an instrument of will, it is an agreement and it requires the complete consciousness of all the involved parties. Under all its legal forms, comprised by the law, all the consequences that result from the application and completion of this contract are to be accepted and obeyed by all involved parties. [1]

1.2. The consumption contract as an instrument of commercial and judicial regulation

As a counterbalance to the general contract, the consumption contract shows a nature that specializes in the economical and commercial side of a company. The contract has as a main objective the protection and regulation of certain economical principles that intervene between the contracting parties in such situations. The argument and detailed analysis of the condition in which the agreement is applicable becomes extended. This is the way in which the law intervenes in supporting, supervising and ensuring the completion of the voluntary agreement between the parties, in a manner that is reasonable for all those involved. The law guarantees free access to information and a full understanding of the contract, in order to avoid certain abusive forms that might impair one of the parties, as well as for ensuring a balance of the contract and equality between the parties.

Through its detailed nature, the contract of consumption exerts a pressure in changing the general contracting terms, which leads to the introduction of new terms and regulations, at a

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general level. This is a desirable aspect, but it is hard to apply, due to the general nature of the contract, which has been conceived mainly as a manner of legal regulation, and not as a specific instrument for determining economic relations between certain parties. In-depth analysis of legal relations between parties presents certain difficulties in relating the general civil frame to the specific one, which is oriented towards commercial relationships. Such commercial relations may sometimes present a view that is somehow against the general terms of civil law. Any particularization of the legal relations between two or more parties presents a dilemma not only regarding implementation and application, but also in grading the way in which they interact with the legislator.

The specific clauses and provisions of the consumption contract, which are meant to protect citizens against a potential abuse, cannot be automatically applied to the civil contracts, but the way in which such provisions help and lead to avoiding certain abuses on any party is notable. Inevitably, one of the parties will have access to fewer resources in defending its own interests. According to the theory of the contract balance, this is the reason why many of the consumption contract provisions can be seen as an example of protecting a weaker part involved in a contract and of ensuring a climate of balance and equity. [2]

2. Differences, similarities and the relation between the general and consumption contracts

Through its nature, the general contract presents a wide frame, defined by the law, which tackles the totality of civil agreements between two or more elements. By contrast, the consumption contract deals with the commercial aspect and it attempts to ensure an as equitable and correct climate as possible. The consumption contract mainly addresses the rehabilitation of a balance of forces between the parties. This is a balance that, for many reasons, one of them would not have the power to support, and protect its own rights with the same resources that the other party involved in such a contract would.

2.1. Differences and critics about the influence on the general contract frame

Based on these very differences, many points of view assert that the two types of contracts represent two separate instruments, which are completely different and are to be tackled as such. The consumption contract is supposed to represent a special case and it cannot be integrated in a comparative study, together with the general contract and the way in which it relates to the latter.

The circumstances to which the consumption contract is submitted, the references it makes to

different provisions and its manner of implementation in the consumer's protection are aspects that cannot be included and compared to the general contract terms.

Many of the specific norms for consumption contracts present nothing more but an economic aspect that is specific to and applicable only for those contracts that have a commercial character. Some of these aspects are regarded as limitations for the civil law and they cannot be completely passed to a general level, as they have an explicit predisposition for they are of consumerism.

Some of the critics and concerned views come to present the ways in which some supra-regulations stand against free initiative and fringe the parties' rights in the contract conclusion procedure. Formalizing some regulations that only make it harder for and tie the contracting parties to preconceived situations in which they can do nothing but accept them, and they cannot negotiate for themselves the best solutions for each party. By taking such a formalization of some norms of right to a general level, we increase the risk of fringing the citizens' rights regarding the form of agreement they choose and that they can assume, in relation to other parties they want to conclude a contract with. [3]

This approach is highly criticized as it is considered to be an obstacle for the contracting parties to decide on certain provisions individually, as well as on some provisions they may want to use or not. In such cases, many of the specific aspects become mandatory for those involved in the contract, as they do not have a voluntary and assumed character. The contract is, by definition, an instrument meant to ensure balance, equity and correctness, but in this case its power over the parties becomes unbalanced.

From a legal point of view, the critics focus on the prefabricated and static form of the contract, so that it blocks the liberty of the parties to establish the best requests and benefits, according to their own interests. Some provisions come against the liberty of decision.

2.2. Similarities and benefic influences on the general contract

Even by taking into account the major differences that occur between the two types of contract, one can say that the majority of changes that were brought on the general contracting frame arose from the influence of the consumption contract. The majority of the addenda are mainly of an economic nature and the involuntarily influence the entirety of the general provisions and the way in which the law relates to them. The social and human relations between people, institutions and entities present an unequalled influence on the Romanian and European legal frame.

As seen, the majority of influences in the economic area come to represent both problems and

solutions, not only for the commercial or consumption contracts, but also for general agreements.

By the adjustment of the civil law, one can note that the influence is becoming bidirectional and we cannot completely limit it to only one area of the law. The intertwining of legal provisions comprises the entire legal spectrum and they begin to represent actual legal norms. Even if the consumption contract is based on protecting the consumer's rights; it becomes overgeneralised and transposed to a wider frame as the protection of the citizens' rights regarding the regulations of general contracts. The majority of changes are made based on the commercial cases and experience. This is the one area where one can find, more often than not, differences in interpretation and regulation, which are insufficiently defined, in order to present a lack of ambiguity in deploying the existing legal norms.

The consumption contract's principles do not imply only protecting one of the parties, but it tries to determine all those involved to agree on some conditions, in order for all of them to be able to comply with their contractual obligations. This is a norm and way of thinking that is brought about, or at least encouraged to be applied in other types of agreement as well. The specificity of consumption contracts is presented through the provisions it is trying to fight against and the insuring measures it is trying to impose on the general contract, in order to ensure a balanced and honest deployment of an agreement between two or more parties.

As many of the general contracts represent reference footage for the consumption contracts, it can be said that the latter apply all the principles of the former. Under certain precise circumstances, the rules and regulations of the general contract will completely be applied to the consumption contracts. [4]

3. European and national legal space

As a result of Romania's adherence to the European Union, the issue of regulating general and consumption contract has become a national problem, at a European level, and, at the same time, and European problem which needs to be adjusted and harmonized with the national regulations. A fair adjustment and a unitary regulation represent an objective of coherence, so that the national law must not be altered, or lose its internal character and specific. The European provisions have a tendency to ensure the European citizen concerning the process of justice and the legal manner in which his interests are represented and protected.

As one cannot avoid different lacks in legislation, and many unclarified situations may occur, which may represent the inexistence of one regulation concerning a fair solution, the application

of a European law is utterly necessary, and this needs some adjustments regarding its members. The socio-economic frame is in a continuous change, which triggers the need for perpetual adjustment of the specific legislation. The European law comes to cover any gaps that may exist in any national law of its members. [5]

3.1. General national frame

At present, the national legislation makes a very clear difference in defining the general and consumption contracts. The consumption contract is to obey some specific norms, which are not valid at a general level, so far. The form of the contract, that between a consumer and a professional, the one-sided cancellation and the consequences, the contracting parties' obligations and the specific rules concerning any abusive clause that may be imposed on the consumer are constitutive parts of such a contract. The internal legislation makes a clear difference between the two types of contract, but there is no concrete boundary, as there is in some other European countries. For example, in France, the contract regulations are made by means of the civil law, while the consumption contract belongs exclusively to the economic area and is mainly present by means of commercial contracts and reports. This difference is meant to keep a distance between judicial relations, and those that may include any possible economic interests. [6]

Nowadays, in Romania, the legislation is undergoing some times of change and adjustment reporting to the European law, as well as to the internal frame, as it has not yet decided which approach to take, regarding contracts and the differentiation between them. At present, difficulties are also caused by the possible implementation and practicality of these changes in the national legislation. These changes may cause some issues in the system, and this may ultimately reduce the effectiveness of applying such a harmonization of judicial legislation.

The differences and ambiguities of Romanian legislation also occur when it comes to the role of the consumption contract. In the specific frame, this contract is considered to be fundamental instrument for protecting the rights and interest of the consumership. It can be said that the contract of consumption also defends the citizens, in certain circumstances and in any cases when his interest determine him to conclude a commercial agreement. At the same time, according to the national law, the fundamental rights are to be protected by means of the civil law and, subsequently, by means of the general contract. Thus we can allege that the economic and commercial interests are protected by means of specific contracting instruments, but the contractual law regulation defends the rights and liberties of the citizenship in any legal agreements the latter may conclude. In this case, the

consumption contract is the mere defendant of services and goods a consumer may be entitled to by contract. [7]

3.2. The European judicial frame

The European legislation in this area mainly tackles the manner of application and deployment of the European directives regarding the consumer's rights, especially 97 / 7 / CEE and 2011 / 83 / CEE. The purpose of the European directives is to ensure the legal frame upon which the member states are to adjust and improve their own internal legislations.

This frame has to offer a climate of transparency for the European citizens to rest assured that their rights are guaranteed and protected. The application of law regulations regarding the consumers' rights has a lengthening effect on the general contracting frame. This effect consists of offering an intensified regulation and to ensure an appropriate procedure whenever the gaps in the legislation may lead to ambiguities that can be exploited to the disadvantage of the citizen and his interests. [8]

Common practice admits that not all the provisions must be harmonized to the general contracting frame. By their judicial nature and the differences between the two concepts, we cannot suppose that the two cases are based on the same situations. Even so, the pressure and influence exercised by the European law brings addenda to the national legislations, especially in those areas that were not yet determined and regulated by the national legislations.

The European law also seems to be a liant between the citizens and the member states and it embodies a period of adaptation to the socio-economic European space, by which the member states are encouraged to find their own solutions and methods of adjusting to the European climate. The civil frame of the European Union regulates and ensures the principal rights of its citizens. Besides this, the most frequent issues that occur between citizens and the member states are of a commercial and economic nature. [9]

The manner of gradual deployment in the form of recommendations has as a main purpose the preparation of the member states for any future adjustments. It can be said that the actual legislation encourages a harmonization of the rights meant to protect the consumer, as an example for the legal provisions regarding any civil contracts. One of the priorities of the European Union is the protection of the civic rights and liberties of all of its citizens. [10]

4. Future perspective

One can say that the future of Romanian legislation, as well as the European law, with its addenda and completions, regarding the consumption contract, will be directly influenced by the general

forms provided by the civil law. The evolution and development of commercial relations will offer us a completely new series of cases, where the actual regulations will not be able to deal with the many different economic domains the citizens will take on. It can already be noted that the contract for utilities and the on-line commerce bring up new situations, which have not yet been regulated, and which are still weakly exemplified and determined. These are situations in which the consumer's rights can be broken, but issues may also occur in the case of general contracts, cases when the citizen may be prevented from acting and making full use of his liberties and contracting rights.

In the future, we'll present a clear analysis of the distinction between contracts and consumption contracts, based on the Romanian law, and the approach will be chosen as to make a distinction between the two, or to lead to a better understanding. The consumer's protection, which is provided by the consumption contract, may be seen as both an example and a manner of deployment and protection of certain rights of a commercial and financial nature.

At the same time, one cannot say that this consumption contract does not have any impact on other social, human and judicial aspects. More often than not this type of contract has a major impact on the moral and economic dignity of one person. Taking this into account, one can conclude that such a contract, with such repercussion at both individual and collective levels is an example that should be taken into consideration for the wider spectrum of general contracts. Many of the consumption contracts' provisions can be declared as ensuring measures for protecting the citizens' rights, not only economically, but also from a moral and judicial point of view.

One appropriate solution for the future might be the adjustment and improving of European law, based on the existing provisions regarding the consumers' right, from the actual civil law. This way, all future recommendations and European directives can be easily adapted and applied inside the national legislations.

At the same time, a more explicit European law, regarding the area of general contracts, could bring an additional boost to the member states' will of synchronizing and harmonizing their national laws.

As a final conclusion, we can say that, sooner or later, the continuous development of the European socio-economic climate will lead to a tighter coordination relation between the European law, the legal form of contracts, and the specific provisions regarding the protection of consumers' rights and the consumption contracts. One cannot yet say which are the details that will be requested by the law-giver, but we can say that the legal form is bound to undergo substantial changes based on the ones that have occurred in the general European

climate. These changes will be brought by the social, economic and judicial demands that exist

inside the European community and the European nations.

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