THE HYSTORICAL, PHILOSOPHICAL AND LEGAL FUNDAMENTALS OF COMBATING UNFAIR COMPETITION

Viorel ROȘ*
Andreea LIVĂDARIU**

Abstract

Unfair competition is abuse. It is abuse against freedom of competition. Abuse against freedom of initiative and freedom of commerce. Who shall obey the laws of honour and probity? Who has the obligation to do it? Fair businessmen! Who says unfair, means contrary to the objective behaviour of honest man in business. Of man for whom the freedom of the other cannot be violated by the exercise of his liberties, because he understands his own freedom as a necessity. Business morality is a particular form, a species of universal morality, the sum of legal constraints and honest commercial practices sanctioned by law. But the world of businessmen is not populated by angels.

Keywords: *unfair competition, freedom of competition, monopoly, freedom of commerce and industry, abuse of freedom.*

1. Introduction

Competition is rivalry in a field of activity, it is a competition between people who act on the same market in order to monopolize it and to get the most profits. There is competition when the consumer has alternatives in choosing products or services, competition being related to the freedom of choice. By pursuing its goals (promoting innovation, efficient resource allocation, limiting economic power, fair distribution of income), competition is an efficient means to organize markets, economies. The purpose of prohibiting acts of unfair competition is to ensure respect for fair market behaviour. Observing the freedom of others.

Freedom of competition derives from the freedom of trade and the freedom of industry being acknowledged constitutionally [(Article 135 (1) and (2).] Competition is the active form of freedom of initiative and freedom of trade. An essential feature of market economy and a must for economic progress. But if economic freedom (to undertake and to trade) is outside any constraints and has solid support provided by the basic rule of private law according to which the individual is allowed everything is not expressly forbidden by the law (for example, individuals cannot carry out economic activities upon which the state has reserved monopoly), competition is only acceptable if it is fair, namely if respects *"honest practices and the general principle of good faith, in the interests of those involved, including respect for consumers' interests"*.

2. Freedom, an understood necessity?

According to Blessed Augustine[1], if no one asks what freedom is, we know, but if anyone asks us what it is, we do not know it anymore. Still, Augustine de Hipona wrote a lot about freedom and its limits, concluding that man does not have a complete power of choice, meaning that not everything that man does depends on free choice. Supporter of the principle of divine grace, he does not give up the principle of man's freedom of will, making a synthesis between affirmation of divine grace and assertion of liberty. Man has the power to choose between good or bad, but there is no perfect balance between freedom of choice and divine grace, which only Adam had it and which he destroyed by the original sin. However, will never decides without reason, without being attracted to a good that it perceives. But this perception does not lie in the absolute power of man; God is the one that determines either the external causes of perception or the inner light that acts upon the soul.

Augustine de Hipona examined the individual's freedom in relation to divinity. Philosophers, trying to discuss it in layman's terms, of relationships between people and between people and states, define it negatively: freedom is a lack of any constraint. In other words, freedom means not being impeded to do what you want and to say what you want, to be in charge of what you do and what you do not do by your own will. Freedom requires self-determination without any external intervention and independent choice of behaviour. Jean-Jacques Rousseau also defines it as negative by saying that ***"freedom does not consist in the fact that people can do everything they want, but***

* Professor, PhD, Faculty of Law, "Nicolae Titulescu" University of Bucharest (email: **viorelros@asdpi.ro**).
** PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (email: **andreea.livadariu@rvsa.ro**).

[1] Augustin de Hipona (354-450), philosopher, theologian, bishop, doctor of the Church, is one of the four parents of Christian Church, alongside Ambrose, Jerome, and Gregory the Great.

in the fact that they must not do what they do not want to".

Are we really free, or are we ever free in the sense of these definitions? We believe that for people, pure and simple freedom is an illusion, a chimera. According to Constantin Noica, freedom is the opening that closes, although he speaks of the *"closure that opens"*[2]. Freedom is the openness that offers the possibility of choosing between several alternatives and closure in the choice made. If freedom implies a choice (which is not just between yes and no) then the process of choosing is already a form of constraint and then the choice makes us prisoners. We are determined in our actions by the reasons for which we make a certain choice and in which reason has a decisive role. We are determined by necessity. The necessity understood by and through reason.

The first to notice the contradiction between freedom and necessity was the Stoics[3], but it was a long time before freedom was defined also as an understood necessity.

For Baruch Spinoza[4], truly free is only God. Only He, having total independence, can attain the ultimate freedom. Does Spinoza contradicts when he says that freedom cannot be denied not even to man guided by reason, since he also says that everything (therefore reason too) is determined by the necessity of the divine nature, and free is God alone? We think so; it is a contradiction in what Spinoza says.

But does man, who is driven by reason and pursues the good, does he do it for himself or for others? For Spinoza, the man who is guided by reason is free only with others. Man is freer in collectivity, in a state where he lives by law, than in loneliness where he obeys only himself. But in collectivity, freedom cannot be dissociated from the laws that are necessary in order for the common good, collective good, to be asserted. Spinoza does not oppose freedom to necessity but to constraint, because only in the case when action is the result of constraint, it is not a manifestation of freedom.

The idea of freedom as necessity (constraint), still shyly formulated by Spinoza, is developed by Kant[5], but the latter considers that divine freedom and human freedom are equally important, and that the divine origin of reason[6] and good is worthless if is not also put into practice. But for this there is a need for reason, knowledge, experience, because he emphasizes on the knowledgeable, discerning subject. Kant's man is subject to causality and, implicitly, to necessity. He has to act in all circumstances according to the *"categorical imperative"*, that is why the freedom of the individual implies rational action, action which is decided by the compliance of his own will with the duty to act for the good, presupposes a conformation based on his own convictions, on education, altruism, subordination of individual interests to those of the group. Man is free because he conforms to good will.

For Hegel, reason as freedom cannot be limited to the individual regarded autonomously, as his predecessors see it. For Hegel, freedom of each is conditioned by its acknowledgement by others because we are free only together or we are not at all, hermits cannot be counted not even as an exception to this rule, because their hermitage has another goal, that of Communion with God, not with people. Isolated freedom does not even exist for Robinson Crusoe[7], because he was compelled to live on his island, not by his own desire.

Mutual recognition of freedom, the recognition of other's freedom, can only take place in communities organized as states, which is the only form of political organization of people that makes it possible to unite individual wills in a collective will. In such an organization, man acts in accordance with his needs pursuant to collective needs, the necessity not being a denial of liberty, because they are not mutually exclusive. Moreover, the individual wills joining as a collective will, it is in everyone's interest that the state and its institutions act well, this being the very guarantor of individuals freedom and that is why everyone must get involved in public life. In the absence of involvement, states can evolve only towards dissolution or dictatorship. But in this case we come to the conclusion (already formulated by Montesquieu) that *"philosophical freedom consists in the exercise of our will, or (at least, if we take into account all systems), having the conviction that we are exercising our will"*[8].

---

[2] Paul-Gabriel Sandu,"Freedom in need and becoming a being" https://cerculnoica.wordpress.com/2007/11/17.

[3] The philosophical current, the initiator of which is Zenon of Kition, appeared in the year 300 BC. The name comes from the ***stoa polikie***, which was the porch painted at the entrance of Zenon's school in Athens. It was the most important philosophical movement until the adoption of Christianity as a state religion in Europe. Among the Stoics' ideas, we mention: there is nothing immaterial; the world is only one, the matter-spirit dualism not being permitted; fire is the sole element and is represented by God; knowledge is based on senses and perceptions; the universe is governed by absolute laws; the essence of human nature is reason; man must live in harmony with nature; virtue encompasses wisdom, courage, justice, and temperance.

[4] Baruch Spinoza (1632-1677), a Jewish-Dutch philosopher with a monistic representation on the world.

[5] After Immanuel Kant's death (1804), his followers named the alley that led to his crypt in the graveyard, *„Stoa kantiana"*.

[6] Kant wrote *Criticism of pure reason* in 4 months. He published the first edition in year 1781.

[7] Robinson Crusoe's story is used to demonstrate that he was free until Friday showed up, which become his slave. It was only his release that would have made Friday his equal, which was also a condition for Robinson's freedom. The man who restricts the freedom of other or others is not free, even when they survive only by the memory of their will. The affirmation belongs to Carol Voytila, who became Pope John Paul II, to whom the saviour of a Jewish child, whose parents were killed in the camps, presented him in order to be Christianized. The future Pope refused to do so saying that his parents would have wanted him to grow up like any Jew in his religion.

[8] Montesquieu, *About the spirit of laws*, Vol. I, Scientific Publishing House, Bucharest, 1957, p. 232.

3. Freedom in law

The two great philosophers wrote before, during, and after the French Revolution (many others have written, but we must limit ourselves to them due to lack of space), but for neither of them we cannot possibly acknowledge the right of priority for enouncing the idea of freedom-necessity, because these ideas are known to us and present at least since Sophists, meaning that they have an age of over 23 centuries. And we do not know whether philosophers have influenced revolutionaries or revolutionaries influenced philosophers in formulating the idea of freedom as a necessity. I would rather say that at the end of the eighteenth century, these ideas become current again, they were floating in the air, their time was here, and philosophers and revolutionaries put them into work and expressed them differently and originally.

We cannot, however, not notice that in the Declaration of the Rights of Man and of the Citizen, the definitions of freedom are rather philosophical than legal. Thus, in the first article of the Declaration, it is stated that ***"people are born and remain free and equal in rights"***, art. 4) states that ***"freedom is to be able to do everything that does not harm the other." The exercise of the natural rights of every person knows no limits other than those that are needed by other members of society to enjoy the same rights. These limits can only be determined by law "***, *and by art. 5) it is ordered that "the law has the right to prohibit only dangerous actions for society.* ***Everything that is not prohibited by law cannot be prevented, and no one can be compelled to do what the law does not order"***.

Not even Abraham Lincoln is too far from philosophers, nor does he approach too much of jurists when he says that ***"in collectivity, freedom is not the right to do what we want, but the right to do what is right"***.

The Universal Declaration of Human Rights, adopted on December 10, 1948, when human rights were, in many parts of the world, only words that didn't fit in Courts anymore, and in libraries were carefully hidden, takes parts of the Declaration of French Revolutionaries and thickens something where the need was felt to do so to reaffirm the principle of freedom as an understood necessity.

Is the fundamental right and freedom one and the same thing? If you ask some, yes, if you ask others, no. We shall not analyse this controversy, because another is the subject of our endeavour. We will confine ourselves to mention that Professors Ion Muraru and Simina Tănăsescu[9] say that between freedom and law there is no trenchant opposition[10], that the fundamental right is a freedom, and that freedom is a fundamental right, that the use of both concepts are based on a historical tradition, but also that the expressivity and the beauty of legal language and we believe that for the sake of expressiveness (to science being quite difficult to be beautiful in language), it is worthwhile to do, sometimes, and carefully, the concession of putting a sign of approximate equality between the two terms and that we can, with their help, shade and / or potentiate arguments, demonstrations or theories.

We believe that man cannot have absolute freedom, being limited by necessity, by laws (natural and social). In law, freedom is bordered by social laws, Montesquieu defining it as *"the possibility of doing what law allows; If a citizen could do what they forbid, he would no longer have freedom, because the others could do the same"*[11].

The individual has a greater degree of freedom when his actions concern him exclusively, in which case state intervention is almost excluded, and a lesser degree of freedom when his acts or his conduct concern others, in which case, for defence of the rights and freedoms of others or of general interests, the state must intervene. In other words, freedom relates not only to the individual, taken separately, but to others also. Or especially to others. But freedom is not limited only by social laws, and it is not fair to speak of *"freedom (only) within the law"*, if we admit that from the point of view of the science of law freedom is to be able to do what does not harm others. But there is a fallacy between the philosophical concept of freedom and freedom in the science of law, because in the philosophical sense freedom consists in understanding necessity, and this also comes from knowing objective laws, the laws of nature, the mastery of the forces of nature, and not just social laws.

Freedom does not imply positive obligations from other individuals, taken separately. But it implies an obligation on the part of the state (the community) to ensure the conditions for unhindered exercise of individual freedoms, including by means of legislation. The rest are held only by the imperative of abstaining, by the negative obligation not to do something that prevents the exercise of the other's freedom. That is why it is right to say that freedom preceded the law, the latter being nothing more than a limitation of freedom. Or the means of limiting freedom. And yet, the law itself declares the following as being absolute: freedom of thought, freedom of conscience, freedom of opinion.

4. Freedom of commerce and industry and free competition

Perhaps nothing can explain the binomial freedom better - the necessity and the way in which the freedom of everyone is limited by the freedoms of the other than the analysis of the relationship between freedom of commerce and industry and freedom of competition. Competition is the active form of free

[9] I. Muraru, Simina Tănăsescu, *Constitutional Law and Political Institutions*, Lumina Lex Publishing House, Bucharest, 2001, p. 162.
[10] Apud Valerică Dabu and Ana Maria Gușanu, Law and freedom. Legislative inconsistencies. Criminal Law Journal no. 4/2013.
[11] Montesquieu, *op. cit.*, p. 82-83.

initiative. Or the abuse of freedom of initiative, violates the freedom of the other.

As it is well known, by successive measures adopted, the French Revolution abolished the privileges, monopolies, taxes (because they were not being consented by the people), and the devious prisons of the debtors, abolished professional associations, but these measures didn't have positive effects only, on short term they had the effect of creating chaos and wild competition, with adverse consequences on economic activities.

The Declaration of the Rights of Man and of the Citizen, adopted on August 26, 1789, facing the evidence that taxes are the *"soul of the state"*, reintroduced tax obligations abolished shortly before, carefully declaring them as *"a necessity freely accepted"* by every citizen (the 1793 unapproved Constitution, speaks of a *"honourable obligation"* to contribute to the state's general expenses through taxes and duties and about the *"consent"* of taxpayers' to pay them, but try not to pay them and you will see how free and freely consented this obligation is!).

The law of March 2-17, 1791 (known in French and Belgian law as the Decree d'Allende, as its initiator[12]) abolished corporations (considered to be contrary to the right to work), proclaimed freedom of initiative, commerce and freedom of competition[13]. And if the first two freedoms do not have a different content then the one thought-out by French revolutionaries, the freedom of competition has diversified and enriches its content even today. Since then, these freedoms are part of the legal and economic life of modern states. According to art. 7 of this law, *"any person is free to do any trade or exercise any profession, art or occupation that it considers to be good for it; However, it will be obliged to obtain a patent beforehand, to pay for it the levy established by law and to comply with the regulations established or that may be established for them. "*

The doctrine considers that the d`Allarde Decree formulated two principles:

- The freedom of initiative, namely the freedom to conduct an economic activity (by which we understand the freedom to undertake and freedom of trade) and the freedom to practice a profession (which we believe can be included in the broader concept of freedom of initiative);
- Free competition, consisting in the fact that the economic factors must observe the ethics in order not to falsify in any way the competition. However, this ethics in the D'Allarde decree seemed to be limited to a principle of economic neutrality of the state, which, in order to be able to respect competition, could not carry out industrial or commercial activities in a way that would break the balance between competitors. However, to persons of public law there was acknowledged the right to pursue economic activities if they are justified by the general interest. It is, however, difficult to say if D'Allarde had the complete representation of consequences of his act, if he considered a principle of perfect competition (we can assume, however, that he thought so, since he addressed the issue of state neutrality, the perfect - hypothetical competition - being one where no consumer has the power to influence prices), making it harder to believe (but not entirely excluded) that he made the law with which remained in the history of law as one who is considering "illicit competition". In no case, however, I do not think it is right to suspect him of demagogy, as it is claimed by some political actors to argue for legal solutions when he proclaimed these freedoms.

By d'Allarde Decree, freedom of initiative and commerce and free competition gains legislative legacy and also, little by little, the status of basic market economy principles that have been adopted as such in more and more countries and competition law becomes, after passing through the New Continent an important branch of law, making it interesting for the economy, but also for intellectual property. By this normative act, the freedom of commerce and industry, which they consecrated, *"allowed the valorisation of human activity, and the abuse of these freedoms is considered unfair competition"*[14] and allowed it to be sanctioned by the judges. Only that it had to pass half a century from adopting the principle of free initiative and competition for judges to qualify the abuse on freedom to act as unfair competition and nearly 100 years until competition laws became part of the legal life, and competition law, a branch of law.

We can assume that for both French revolutionaries, the two freedoms, respectively the freedom of initiative[15] (to undertake or to carry out economic activities) and the freedom of trade (to sell the products) originated in the natural right of man to acquire the means of existence: food, clothing, housing, personal comfort. However, descending more in the quest for origins we find that these freedoms have in fact, a correspondent in an obligation, in the divine responsibility of every human being to preserve his life. To take care of his or her life and those to whom he or she is indebted by blood or marriage links to do so. But

[12] Pierre d`Allarde (1748-1806), military, political and businessman.

[13] It is argued - especially in political environment - that the French Revolution "*has demagogically proclaimed freedom of trade and industry - as if selection is nothing more than the manifestation of freedom of competition."* See Cătălin Predoiu, "The New Civil Code will disturb the *status quo*, not only doctrinal but also institutional, in legal environments", available on *Juridce.ro* on October 18, 2011. But the Decree d'Allende is considered the act of birth for competition law. See in this respect Bernard Remiche, Vincent Cassiers, *Droit des Brevets d 'Invention et du savoir-faire*, Larcier, 2010, p. 670 and 672 and Andrée Puttemans, *Droits intellectuelles et concurrence déloyale*, Bruylant, Bruxelles, 2000, p. 103.

[14] Andrée Puttemans, *op. cit.*, p. 103.

[15] Our Constitution speaks in Art. 135 (1) about freedom of initiative and competition and in art. 135(2) about State's obligation to ensure freedom of trade and protection of fair competition.

also to be solidary with others and to help them in need. Obligation whereon the Constitution of Romania treats as right to life (Article 22).

Nevertheless, what is the connection between free competition, freedom to create and intellectual property? The answer seems simple: where there are competitors, where free initiative is active, there is also abuse of freedom. And it seems that this happened and was noticed faster in the field of technical creations and distinctive signs, where competitors are intelligent, inventive, good observers, interested and connoisseurs on markets, people who see easily the opportunities and advantages that can be gained by means of unfair methods. And in the entrepreneur world, not all cultivate all the virtues, and perhaps the rarest of those cultivated is honesty, otherwise there would not have been a need for such a broad regulation on competition issues. And it cannot be a coincidence that freedom of initiative and abuse of this freedom that manifests itself in the form of dishonest competition has become part of our lives since the beginning of industrial revolution. Wherever economic activities flourish, we shall also face abuses of freedom and we shall encounter unfair competition phenomena.

Let us remember, therefore, that when the Viennese organizers of the sixth international exhibitions in 1873 invited the US to attend the event, the invitation was received with reservations, the American industrialists being unwilling to publicly expose their achievements due to the high risk of theft, possible risk due to low level of protection of inventions abroad (they had a patent law since 1812 and a patent office since 1815). That is why the United States conditioned their participation to the exhibition by the adoption by Austria of a patent law, which was adopted in the same year by the organizing country. But Austro-Hungary spilled its humiliation from this incident over Romania, which was forced in 1879 to adopt a trademark law in order to comply with an obligation assumed by a trade convention concluded with the same country in 1875. But we must admit that not even for the Austrian the forcibly adopted law of inventions was not that bad, nor did the adoption of trademark law for us, after we had promised the Austrians four years before we would do so, Romania becoming part of the small group of countries that had a trademark law.

But how can be unfair competition be punished in the absence of a special regulation?

In France, respecting the tradition, the judges took one step further in front of the law. Or maybe, by doing so, they have only complied with the obligation to judge also in absence of laws, as provided by art. 4 of their Civil Code and now: *"the judge who will refuse to judge under the pretext of silence, obscurity, or inadequacy of the law, may be prosecuted as guilty of denial of justice*". A text that existed also in the previous Romanian Civil Code (in article 3).

In the absence of a special law, the French jurisprudence has sought and attached to the principle of civil liability for punishing the abuse of freedom of initiative, on the basis of art. 1382 of the Civil Code (following the amendments adopted in 2016, Article 1240 and with correspondent in the old Romanian Civil Code in Article 998, and in the new Civil Code, in Article 1349) considered to be the most effective legal basis of the action for damages-interests in the case of abuse of free competition. Thus, grounded on the action on civil liability, the action on unfair competition still did not permit to the offended trader but the reimbursement of the damage incurred on the basis of a lengthy and costly procedure[16], which did not confer the benefit of the obligation to terminate the actions or the possibility of ordering the provisional suspension of non-honest competition by the judge. That is why, in practice, the victims of such acts preferred to refrain from taking legal action.

As during the nineteenth century, the economic confrontation was more and more fierce, ruthless and increasingly unethical (remember, it was the period of the industrial revolution, the beginning of the international exhibitions, the war between the partisans and the opponents of the patents), the judges were, however, forced to put competition (increasingly wild) within the limits of reasonable conduct, even in the absence of special regulations. The first decision to punish acts of unfair competition was pronounced in France in 1833, which was based more on moral arguments than on legal considerations, the most used argument being that no indulgence is justified to the one who acts in bad faith *(malitiis non est indulgendum - there is no indulgence for malice)*. The appeal to this Latin legal adage means that the action on competition was considered admissible only if the bad faith of the Respondent could be established.

In the mid-nineteenth century, and in any case before the adoption of 1883 Paris Convention on the Protection of Industrial Property, France used the expression **"acts of unlawful competition"** to designate abuse of freedom of initiative, the same expression being used in 1850 by a court in Brussels. In the second half of the nineteenth century, the French and Belgian courts began to use the expression **"unfair competition"** for unethical conduct in business. Those acts were in particular related to the misuse of distinctive signs, trademarks and factory brands belonging to another, and that is why the 1883 Convention also referred to unfair competition, to which, as revised in the year 1900 dedicates an entire article (10 bis). In year 1858, the name of "unfair competition" was also used in doctrine[17] in a work by Edouard Calmels, and in 1875 in a treaty by Eugene

[16] Procedures are (longer) lengthier and more costly in our county also after the adoption of the new codes, from this point of view the civil procedure does not have the expected effect.

[17] Edouard Calmels (1818-?) Des noms et marques de fabrique et de commerce et de la concurrence déloyale.

Pouillet[18]. But in 1895, James Vallotton[19] published in Lausanne, a work entitled "*La concurrence déloyale et la concurrence illicite: étude de jurisprudence*".

French jurisprudence has priority also for progressive formulation of a planner for unethical behaviours and for which the moral fundamentals are predominant, even if the establishment of bad faith maintains its status as a necessary condition for finding the act of unlawful competition and to grant damages. France was, however, deprived of legal grounds to take legal action in civil liability, of the possibility to order measures in order to terminate unlawful competition acts, and the solution could only be that of compensating the victim for the damage incurred.

In **Germany** also, after the principles of freedom of initiative and the free competition were legislatively acknowledged by the Code of Industrial, Trade and Craft Professions adopted in 1869, abuses were starting to emerge, but the judges did not react as the ones in France, by sanctioning the abuse of freedom of initiative on the basis of non-contractual liability, but it must also be said that the legal, political, economic and social context was different in Germany from the one in France, and the disputes between the two countries were not such as to encourage the exchange information on jurisprudence.

It seems appropriate to mention here that the birth of unified Germany was signed in a famous place, the Mirror Hall of the Palace of Versailles, where other important historical documents were signed but **which bear the seal of one of the great acts of unfair competition** (not few), and which is related to industrial property (of course, if we relate to the present times and not to those of the 17th century when the act occurred, the acts)[20].

It is right to speak of Germany[21], of course, only after signing the act of unification, of peace with France (whose emperor, Napoleon III, defeated in 1870 at Sedan, at the date of the peace treaty was signed, was still the hostage of Germans) and the proclamation of Wilhelm I of Germany as Emperor of Germany, all these acts being signed so that the humiliation of France would be complete on January 18, 1871, in the Mirror Hall of Versailles. **A hall decorated with mirrors made by the French 200 years before, following an act of unfair competition whose victims were the Venetian craftsmen, because the mirror manufacturing process was made known to them and the mirrors could be made in Paris (Since 1665) only after four Venetians were *"bought"* by the French.** In Venice, whose wealth was due to mirrors they made, the process was kept secret under the death penalty for those who had disclosed it, and the inveiglement of craftsmen would undoubtedly qualify today as an act of dishonest competition.

Even before the unification in 1871, the German states had numerous competition problems, especially since in 1815 Prussia (the most powerful German state before unification) adopted a law of inventions that impeded imports between German states for products based on patented inventions, the problems being resolved only after the unification in 1871 and the adoption in 1877 of a federal invention law[22]. Competition acts continued to be aggressive also in unified Germany, but German courts did not follow the French model and refused to apply civil liability rules in the field of unfair competition. This determined the legislator of unified Germany to adopt laws between 1894-1896 which additionally regulated also some competition issues (e.g. the trademark law of 1896), so that in 1909 Germany would adopt a General Law against unfair competition.

This final law outlined in a general manner the prohibition of unfair competition, targeting all acts contrary to good morals committed by anyone in business for competition purposes. The law also regulated an action for termination of acts, allowing for a rapid provisional prohibition of unfair competition acts, which was an important development compared to the situation in France where judges could not order measures for termination of competition acts under the civil liability actions regulated at that time by art. 1382 of their Civil Code.

In the US, a law in 1890 (Sherman Act) introduced rules of competition, with regulations needed due to the increasing number of agreements in vital fields of economy, such as railways, oil industry, banking system, that endangered the stability of economic system. Another law, adopted in 1914, complements the first one, inter alia, by prohibiting mergers that could affect competition, by prohibiting a person to occupy director positions in two or more companies, prohibiting sales conditional on the failure to conclude transactions with competitors of the seller. In this way, the acts considered to be unethical behaviours are starting to be acknowledged in law.

Belgium has the merit of harnessing the experience of their neighbours (France and Germany)

[18] Louis-Marie-Eugene Pouillet (1835-1905), lawyer, writer, president of ALAI (International Literary and Artistic Association). *Traite des marques de fabrique et de concurrence déloyale en tous genre*, the first edition being published in 1875.

[19] James Vallotton published his work *„La concurrence déloyale et la concurrence illicite: étude de jurisprudence"* in 10 editions in three languages. He has written several papers in the field of the right of free navigation on international rivers and on administrative law issues. An important piece of work concerns Romania: *„De l`opinion juridique du comité Chamberlain sur le litige roumano-hongrois et de sa portée en droit international"*.

[20] King Ludwig II of Bavaria, admirer of King Louis XIV of France (Sun King), impressed by the Palace of Versailles, which he visited in 1867, wanted a similar one and began his construction in the year 1878 on the island of Herrenchiemsee on Lake Chiemsee in Bavaria. The works were stopped in 1886, with the king's death, and the palace was not finished.

[21] The Holy Roman Empire of German Nation (a multiethnic empire that included territories of Italy, Burgundy and Bohemia) ceased to exist in 1806, after the defeat of Emperor Francis II by Napoleon Bonaparte at Austerlitz. But even in the form of organization that wanted to be a continuation of the ancient Roman Empire of the West, it was, in reality, a decentralized, elective monarchy, formed of principals, duchy, comrades in vassal relations.

[22] The law was adopted after, as in the US, in the German Constitution of 1871, the adoption of a federal law on inventions was provided.

and has contributed a lot to the theoretical and practical development of unfair competition combat system. The Belgian doctrine states that *"if the history of action in unfair competition is very singular, and if this branch of law has experienced unrivalled development and unmatched clarification in Belgium, it has probably happened because Belgian jurists have fed from German experience as much as from the French one, not excluding anything and retaining the best of each of the two systems in order to create a third perhaps more complete and undoubtedly more effective. International Union Law has also played a major role in the elaboration of Belgian law"*[23].

The expression *"unfair competition"* is used in Belgium for the first time in a sentence of Liege Tribunal in 1853, rendered also in connection with misuse of distinctive signs, and in 1865, in a court ruling In Brussels, which sanctioned the behaviour of an employee who left the company where he held the director position, along with several people, and then set up an enterprise with the same object of activity as the one he had left, ruining his former employer. The action against him was admitted on the same grounds as in France, respectively Art. 1382 of the Civil Code, its manoeuvres being classified as unfair competition with the consequence of obliging the Respondent to pay damages to the Claimant.

Belgium also played a significant role in introducing within the text of 1883 Paris Convention special provisions regarding the obligation of states to ensure the citizens of the Union of Paris an effective protection against unfair competition. Extensively prepared, the convention main concern was patents protection and trademark protection. In the adopted version, the Convention contains a general reference to unfair competition (the expression gaining since then international acknowledgement) in art. 1 paragraph 2), which shows what is the subject-matter of the protection of industrial property: *"patents, utility models, drawings or industrial designs, trademarks or factory brands, service marks, commercial names and indications of origin or names of origin, **and also the suppression of unfair competition"***.

As it is well known, the Convention has been revised several times[24], the first of these reviews took place in Brussels on 14th of December 1900. On this occasion, art. 10 bis. was introduced, which limited in assimilating asylum seekers to nationals on protection offered against unfair competition. On 2nd of June 1911, during the Review Conference held in Washington, art. 10 bis has been amended to oblige Member States of Paris Union to provide Union citizens with effective protection against unfair competition. On this occasion, the British delegation proposed amending Art. 10 bis, by stating the concept of unfair competition, but for procedural reasons, the proposal could not be included in the text.

The First World War reiterated the need for more effective combat against unfair competition on international scale, which is why at the Review Conference held at The Hague in 1925, was formulated and introduced in the text of the Convention by art. 10 bis par. 2) and 3) a definition of unfair competition and the main dishonest acts specifically prohibited.

Thus, according to art. 10 bis par. 2) "*constitutes an act of unfair competition any act of competition contrary to honest practices in industrial or commercial matters*". Article 10 bis. par.3) states that **they will have to be forbidden especially**:

1. any facts which are likely to create by any means confusion between the competitor's undertaking, products, industrial or commercial activity of a competitor;
2. false allegations in the course of trade which are likely to discredit the competitor's undertaking, products, industrial or commercial activity;
3. indications or statements the use of which in the course of trade is likely to mislead the public as to the nature, mode of manufacture, characteristics, suitability for use or quantity of the goods.

Is the definition of unfair competition given by the Paris Convention satisfactory, since it defines the competition tautologically, stating that unfair is what dishonest is? Perhaps not.

However, the definition has the merit of making it possible to exit from the repairs register as a consequence of a culprit (as it was before) to operate with a positive rule of conduct, a rule of deontology. This, because the acts and / or deeds mentioned in art. 10 bis par. 2) of the Convention are prohibited, in the presence of any of them not being necessary to examine whether the Respondent acted intentionally or was in bad faith.

At Lisbon Review Conference (31st of October 1958), Art. 10 was introduced requiring the Union countries to provide citizens of the other countries of the Union with appropriate legal means to effectively suppress all the offences referred to in Articles 9, 10 and 10 bis and to provide measures to allow trade unions and associations representing industrialists, producers or interested traders and whose existence is not contrary to the laws of their respective countries, to bring to justice or before the administrative authorities in order to suppress the offences referred to in Articles 9, 10 and 10bis, to the extent that the law of the country in which protection is sought allows this for trade unions and associations in that country.

[23] Andrée Puttemans, *op.cit.* , p. 107.

[24] The Convention was revised, in turn, in Brussels on 14 December 1900, in Washington on 2 June 1911, in The Hague on 6 November 1925, in Lisbon on 31 October 1958, and in Stockholm on 14 July 1967. Romania acceded to the Paris Convention for the protection of industrial property on October 6, 1920, and the revised form in Stockholm in 1967 was ratified by Decree no. 1177/1968.

5. Conclusions

As it is easy to see, 75 years have been necessary for unfair competition to be defined in international law, to establish the facts and acts considered unacceptable in business, to impose an obligation on the Member States of the Union to provide effective means of sanctioning these facts. But if the beginnings of regulations to combat unfair competition are related to industrial property over time the competition field has gone beyond this sphere. And in the European Union, competition issues occupy a central place, a place we will talk about in other articles.

References:

- Montesquieu, *About the spirit of laws*, Vol. I, Scientific Publishing House, Bucharest, 1957;
- I. Muraru, Simina Tănăsescu, *Constitutional Law and Political Institutions*, Lumina Lex Publishing House, Bucharest, 2001;
- Cătălin Predoiu, "The New Civil Code will disturb the status quo, not only doctrinal but also institutional, in legal environments" available on Juridce.ro;
- Andrée Puttemans, *Droits intellectuelles et concurrence déloyale*, Bruylant, Bruxelles, 2000;
- Bernard Remiche, Vincent Cassiers, *Droit des Brevets d 'Invention et du savoir-faire*, Larcier, 2010;
- Paul-Gabriel Sandu, "Freedom in need and becoming a being", available on https://cerculnoica.wordpress.com/2007/11/17.