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CONSUMERS PROTECTION CONCERNING COMPETITION AND CONSUMPTION

Oana GĂLĂȚEANU[1]

Abstract

The entire production and trade activity is performed with the purpose of obtaining the maximum profit desired. This profit can be obtained only if the interest of consumers is constantly maintained for the goods and merchandise that are produced, distributed and sold onto the market. The quality of products and services onto the market is influenced by the connection created between client and supplier. In economy area, the entire activity "gravitates" around consumers. This is the reason for which both the regulations in the domain of trade competition and those regarding consumption are preoccupied with complying with and promoting the rights of consumers.

In this study, we will try to exemplify this preoccupation met at two young law disciplines, the law of competition and the law of consumption, vis-à-vis the interests of consumers, by underlying some provisions that targets them either directly or indirectly, as well as by presenting the institutions preoccupied with protecting the consumers from both the competition and consumption domain.

Keywords: *protection, consumers, competition domain, consumption domain, legislation, institutions*

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Introduction

In any commercial activity, either regarding the production of goods, providing services, distribution of goods, sale of goods, the basic scope is represented by obtaining profit, if not a maximum profit, then at least a satisfactory one, so that to continue this activity. We believe this is the scope of all actors that activate on the market, being either producers or distributors of goods, service providers and finally, consumers. Practically, this entire production and trade activity is achieved with the purpose of obtaining the maximum profit to be desired. This profit can be obtained only if the interest of consumers is constantly maintained for the goods and merchandise that are produced, distributed and sold onto the market. For whose convenience? For the convenience of buyers, of beneficiaries of goods produced and services provided, i.e. of consumers. Why for the convenience of consumers? Because in case they would not exist, the source of profit would also disappear, since logically, nobody would be interested in the process of production, distribution, providing services or products trade. In case there would be only supply on the market, without demand, what would be the meaning of the market existence? Actually, in these conditions we cannot even talk about a market, as the latter is defined by consumers and not by producers, according to the theory of management.

The consumers desire to buy products that would correspond at best to their scope and needs, delivered in the requested quantity and on time, that would be optimally used for a long period of time, with minimum expense and having at their disposal activities of expedient and qualitatively technical assistance, at advantageous prices. Also, they desire to be able to choose from a multitude of business operators that are competitive on the market, of their own suppliers according to the necessities, the preferences, the image created regarding the activity, the reliability and the quality of the products supplied on the market, as well as according to the price.

The ideal is producers' desire to have a dominant position on the market, to produce and sell as many products or services, for which to have minimum responsibility after their delivery and from which to earn a maximum profit.

The quality of the products and services on the market is influenced by the connection created between client and supplier. The

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client is compared to a king and accordingly, there must be taken into consideration his/her desires and his/her changing and strict character.
From the above mentioned details, we can conclude that in the area of economy, the entire activity "gravitates" around consumers. This is the reason for which both the regulations in the domain of trade competition and those regarding consumption are preoccupied with complying with and promoting the rights of consumers.

In this study, we will try to exemplify this preoccupation met at two young law disciplines, the law of competition and the law of consumption, vis-à-vis the interests of consumers, by underlying some provisions that targets them either directly or indirectly, as well as by presenting the institutions preoccupied with protecting the consumers from both competition and consumption domain.

I. Evidences regarding the concerns related to tarde competition with reference to respecting the consumers

In our internal law, the special laws applicable to commercial competition are Law no. 21/1996 regarding competition and Law no. 11/1991 regarding the fight against unfair competition (with their changes performed during time), for their putting to practice being adopted numerous regulations and instructions that must be taken into consideration by the authorities in this area.

Through this entire outlined legislative framework, the scope is to achieve a real competition on the market between the business operators, in the limits established by law and complying with the rules of supply and demand, so that all the "actors" involved in this "game" will have something to win. That is, the suppliers of goods and services, the distributors and consumers, and through them, implicitly the entire national economy. To this extent, in art. 1 of The Law no. 11/1991 regarding the fight against unfair competition, it is expressly provided that "traders are obliged to exercise their activity with good faith, according to the honest practices, *complying with the interests of consumers* and the fair competition requirements". At the same time, according to art. 1 of Law no. 21/1996 regarding the competition, this law has as purpose "the protection, maintenance and stimulation of competition and of a normal competitive environment, *in order to promote the interests of the consumers"*. In other words, a normal and stimulated competition as such is in favour of

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consumers, their interests could be thus promoted in such an environment.

Being familiarized with the first legal provisions of the norms to which we referred to, with the scope and importance of existing such a fair, legal and normal competition, the legislator further explains those situations that, when appearing on the market, they become or they could become a threat for the natural development of competition and thus, for the rights and interests of consumers, reason for which they mention the way they will try to remove them through activities that start from their attentive supervision and they can lead to applying legal sanctions specific to the cases when those activities acquired a serious character that qualifies them as contraventions or even crimes.

These practices developed by enterprises / business operators and considered as prejudicing the free competition on the market, thus putting into danger the rights and interests of the consumers, are the following:

Certain agreements between enterprises, decisions of enterprises' associations and concerted practices that have as object or as effect the hindrance, restriction or distortion of the competition, or on our entire internal market (art.5, paragraph 1 of the Law no. 21/1996 regarding competition), except for those provided by law;

The abuse of dominant position (art.6, paragraph 1 of the Law no. 21/1996);

The economic concentrations that create considerable obstacles for the competition on Romanian market or on an important part of it, firstly following to creating or fortifying a dominant position (art. 12 reference to art.10 of Law no. 21/1996 regarding competition);

The activities that represent contraventional or penal forms of unfair competition, as case may be (provided by art. 4 and 5 of The Law no. 11/1991 regarding the fight against unfair competition).

The proof that such practices used by the business operators which are competing or not, are considered damaging for consumers, as their rights are restricted, it results, among other things, also from the fact that, in case of their existence, starting the investigations necessary for discovering and sanctioning the breach of the norms regarding competition can be done also at the complaint formulated by a physical or juridical person, directly and effectively affected – through this breaching, if we take into consideration the provisions of art. 34, letter b of The Law no. 21/1996 regarding competition and those of art. 8 paragraph 1 of The

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Law no. 11/1991 regarding the fight against unfair competition. Moreover, following to performing the investigations and taking a decision as effect of the complaint formulated, the decision authority will communicate to the author of the complaint the decision in writing and being motivated, practically being thus recognised his/her right to claim the sanctioning of the ones considered guilty of restricting or not taking into consideration their own rights.

The preoccupation for the interests of consumers in what concerns the competition and complying with their rights is manifested also at institutional level. Accordingly, the autonomous administrative authority with legal personality in competition domain is the Competition Council, with responsibilities in putting into application the provisions of The Competition Law no. 21/1996, the provisions of the provisions of The Law no. 11/1991 regarding the fight against unfair competition, the provisions of Emergency Government Ordinance no. 117/2006 regarding the national procedures in the state aid field, approved by Law no. 137/2007 and the provisions of Emergency Government Ordinance no. 21/2011 regarding some measures for the organization and functioning of Surveillance Council.

As it is provided also in art. 2 of Order no. 101/2012 of putting to application the Competition Council's organization, operation and procedure Regulation, this Council has as scope the protection, the maintaining and the stimulation of competition and normal competitive environment, with the scope of promoting consumers interests. Actually, one of the responsibilities of the Competition Council is to collaborate with other public authorities and entities of public interest. Accordingly, it will communicate its point of view against any aspect from the competitive politics domain, also at the request of organizations for consumers' protection, as provided in art. 29 paragraph 1 letter E of Law no. 21/1996 regarding competition.

II. The policy of consumers protection from the point of view of the law of consumption

The law of consumption appeared following to the fact that the following reality appeared onto the market: the existence of an imbalance between the powerful positions of professionals and the weak positions of consumers. It was observed that on the market, within the actual

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consumption society, there are registered excesses and abuses from professionals, business operators' part and that their competition freedom is not enough so that to regulate the market, a protection for consumers being necessary. Due to this reason, it was created an ensemble of rules that take into consideration consumer's protection, ensemble that shapes the law of consumption. Actually, the law of consumption is made up of the total rules that apply to the reports between the enterprise, the production or distribution of goods and services on one hand, and consumer on the other hand(N.L. Heureux (2000) :9).

In Romania, following to the adherence to the European Union, the provisions in the area are recent, and out of them, the most important provision is Law no. 296/2004, also named Consumption Code. The latter has as object the enactment of those legal reports appeared between the business operators and consumers, having as scope ensuring that framework necessary for the access to products and services, being informed correctly and completely on their essential characteristics, protecting and guaranteeing consumers' rights and legit interests against some abusive practices, their participation to establishing and taking those decisions that are of interest to them, as consumers.

Consumption Code's provisions refer to the activity of trading products and services addressed to consumers, the contracts concluded with the consumers, the rules regarding the publicity of products and services (as it is distinguished from the provisions of its art.2).

As it is deduced from art.5 of Consumption Code, the State is interested and has as scope to achieve the following, through the central authority designated with responsibilities in the area of consumers' protection: - the protection of consumers against the risks of purchasing some products or providing some services that might prejudice their life, health or security or that might affect their rights and legit interests; - promoting and protecting the economic interests of consumers, as well as promoting the international cooperation in the area of their protection and participation to quick exchange of information; - achieving the access of consumers to complete, correct and precise information regarding the essential characteristics of products and services, so that the decision they will take regarding them to correspond as best as possible to their needs; - through all means, prevention of and fight against those abusive commercial practices and providing services, including financial ones, that might affect the consumers' economic interests; - actual indemnification

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of consumers; - the education of consumers; - support setting up consumers or their other representative groups or organizations in order to present their opinions in the processes of decision taking, in what concerns them.

For these objectives to be reached, the Consumption Code provides that its provisions are mandatory for all consumers and business operators that perform trade acts and facts, under law provisions (art. 6). At the same time, it comprises also the obligations pertaining to the business operators for not restricting nor breaching the rights of consumers, obligations like: only products or services that are safe to be on the market, and corresponding to the characteristics prescribed or declared, to have a correct behavior in the reports with consumers and not to use abusive commercial practices (obligations comprised in art.8 and 23-26 Code).

For the good functioning of the market and for creating a high level of consumers' protection, as well as for regulating the commercial practices that might prejudice the economic interests of consumers, Law no. 363/2007 was created. It provides (and sanctions) which are the practices incorrect in the relation with consumers, that is those which are contrary to the requirements of professional diligence and which deforms or are susceptible to essentially deform the economic behaviour of the average consumer, according to art. 4 of the Law. Out of them, the legislator considers that the following provisions are especially incorrect: illusive (art. 5 of the law) and aggressive practices.

In the area of consumers' protection, the Government is the one that establishes the regulations for the specialized organizations of the central public administration and for some public services of ministries and other authorities of central public administration, constituted in counties and in Bucharest municipality.

The National Authority for Consumers Protection (on short, ANPC) is a public institution that functions as a specialized organization of the central public administration, with juridical personality, in the subordination of the Government and under coordination of the Ministry of Economy, Trade and Business Environment, according to art.1 of Government Decision no. 700/2012 regarding the organization and functioning of ANPC. It coordinates and performs the Government's strategy and policies in the area of consumers' protection and performs actions in order to prevent and fight against the practices that are detrimental to the

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life, security and economic interests of consumers. It evaluates the market effects of the surveillance system of products and services meant for them. Actually, ANPC is the main institution involved in the policy of consumers' protection from Romania. Out of its responsibilities provided under art. 2 and 3 of Government Decision no. 700/2012, we mention as examples: - elaboration, together with other specialised organizations of the public administration, of procedures regarding the objectives, conditions and way of collaboration in developing the activity of consumers' protection; - participate to fulfilling the internal and international programs from consumers' protection domain, collaborating with institutions and organizations both from our country and abroad, according to their competencies; - performing the activities of consumers' information, education and counselling; - constantly informing the consumers regarding the products and services that present risks for their health and safety, or which can affect their economic interests; - the control of the way how there are complied with the legal provisions regarding consumers protection regarding the security of products and services, as well as regarding defending the legit rights of consumers, through performing controls on the market at producers, importers, distributors, sellers, service providers and in the customs units, having access to the places where the products are manufactured, stored or traded or in which the services are provided, as well as to the documents regarding them; - finding the contraventions and taking measures for limiting the consequences of the producing, providing, importing, trading or free giving some products and services that do not comply with the legal provisions in the domains of activity of the authority, through applying contraventional sanctions provided by law, informing the criminal investigation bodies when there are infringements of penal law; - coordinating the expedient exchange of information with the competent, national and international institutions and organizations, regarding the products and services that present risks for consumers health and safety; - receiving and solving or, as case may be, sending to be solved to the rightful persons the notifications of the associations for consumers protection, as well as of the physical or juridical persons, regarding infringing the consumers rights according to the law.

The authority has in its subordination, according to art. 7 paragraph 1 from Government Decision no. 700/2012, as entities with juridical personality, The county police stations for consumers' protection,

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the Police Station for Consumers Protection from Bucharest municipality and the National Centre for Products Trial and Expertise "Larex" Bucharest.

Besides ANPC, there are other organizations which are preoccupied with and which have a role in consumers' protection, like *Non-governmental Consumers Organizations* which have the possibility to be social partners with a right of representation in the organizations created at central or local level. They can be consulted by the public administration authorities with responsibilities in the consumers protection at issuing the decisions and procedures with general character with other works meant for protecting the consumers (as it results also from the provisions of art. 31 of the Consumption Code). They have a series of rights and obligations expressly provided in the Consumption Code (art. 32 and 33), out of which we mention also the obligation to inform the public opinion, through mass-media, regarding unconformity of the products and services existing on the market, as well as regarding their possible consequences proved to be injuring for the consumers.

Another category of institutions for consumers' protection is represented by *Consumers' protection Consulting Council*. Its constituency, responsibilities and way of organization and functioning are established by the Government (according to art. 44 of Government Ordinance no. 21/1992). This council is set up at county, town, parish level in order to establish and put to application the consumers' protection policy and for correlating the activities of different organisms of public administration with the ones of the non-governmental organizations that have a role in achieving this protection.

Consumers Associations have also as scope the defence of rights and legit interests of their members and of consumers in general. They do not have as scope obtaining profit for their members and they are appreciated as being non-governmental organizations, as juridical persons. Within them, there can be organized also *consumers' consultancy and information centres* that develop their activity freely in their service, activity that consists in giving information, consultancy and recommendations regarding the problems related to purchasing a product or service. These centres have the possibility to receive specialty assistance from ANPC personnel that is empowered to do it, according to art.43 of Government Ordinance no. 21/1992.

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Conclusions

At present, more exactly at the same time with Romania's preoccupation for its adherence to the European Union, it has started the process of harmonization of our legislation and internal policy to the policies of the European Union, being recorded notable progresses also within this process and in the area of consumers protection. It was tried to achieve a common policy of protecting the consumers just for complying with the requirement necessary for the European integration, both in the economy and social area.

The priorities in this domain are centered on improving the safety of products and on the protection of the economic interests of consumers, especially regarding the illusive publicity, consumption credit, incorrect terms of contracts, indicating the prices (those indicated in the White Book regarding Central and East-European Countries and Domestic Market in 1995).

At present, in consumers' protection domain there is an institutional framework well structured within the European Union, existing a relatively large number of institutional actors involved and a basic role of the interests groups well organized at national and European level.

Within the European Union, the competition policy is achieved to the direct benefit of the European citizens and promoting the consumers' protection and welfare represents a primordial preoccupation for the European Commission. In our opinion, the reason for these realities is that the competition policy has a direct effect on the European citizens' daily life, since due to an undistorted free competition climate, they pay smaller prices for goods and lower tariffs for services, as compared to what they would pay in case of existing an unregulated economy. The goods and services can be purchased on the national markets where the prices are smaller, and sanctioning the abuse of dominant position, as well as the control of concentrations/consolidations give the possibility to keep a large diversity of products at relatively low prices; the monitoring of state aids favours creating durable work places and encumbers the distortions of the competition on the unique market.

We consider that in our country there were created the legislative and institutional frameworks necessary for achieving a real consumers' protection. But we believe that these institutions are not sufficiently active. We can give as example the case of the associations for consumers' protection that are not sufficiently active and which, perhaps, do not

receive sufficient support from the local and central authorities. Another example that is worthy of mention is the reality that there is no collaboration between these associations and Competition Council, although the policy in what concerns the competition has a major role on consumers. It is true that Competition Council collaborates with ANPC for complying with the consumers' interests and that in what concerns all institutions preoccupied with this protection, they try to achieve a real and efficient activity of informing, consultancy and study in the domain. We believe that an improvement of the administrative capacity and the expertise of the competent institutions would be required, by performing training activities, as well as by perfecting market monitoring and by increasing the policy's impact through involving an increasing number of specialised "actors", like the consumers protection associations, increasing the level of understanding of the large audience on the importance of this policy and increasing the preoccupations regarding protecting their own interests as consumers. These are as a matter of fact requirements of the European Commission in the area of consumers' protection.

Aknowledgements

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II Legislation

1. The Law no. 11/1991 regarding The Fight against unfair competition

2. Government Ordinance no. 21/1992 regarding Consumer protection

3. The Law no. 21/1996 regarding Competition

4. The Law no. 296/2004, also named Consumption Code.

5. Emergency Government Ordinance no. 117/2006 regarding the national procedures in the state aid field, approved through Law no. 137/2007

6. Emergency Government Ordinance no. 21/2011 regarding some measures for the organization and functioning of Surveillance Council.

7. Order no. 101/2012 of putting to application the Competition Council organization, functioning and procedure Regulation

8. Government Decision no. 700/2012 regarding The organization and functioning of the ANPC

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