

From the content of the juridical relation between the business operator and the consumer, to corporate social responsibility, in Romania

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Abstract: - This scientific paper treats the rights and obligations of the consumers and socially responsible business operators, parties in the same legal relation, representing the content of the special legal relation of the legal institution of consumer protection. The aspects on consumer protection were not analysed only from legal point of view, but from another perspective as well, that of corporate social responsibility, where consumers are part of the category of external stakeholders of the socially responsible business operator.

We consider it is useful for the business operators to analyse and know a complete approach of the socially responsible behaviour of business operators in relation to consumer category.

Key-Words: - Legal protection of consumers, socially responsible business operators, external stakeholders, content of the legal relation.

1 The content of the juridical relation in Romanian legislation. The content of the juridical relation between the business operator and the consumer

Although the Romanian commercial law includes only patrimonial juridical relations (can be evaluated in cash, pecuniary) because the business operator primarily pursues their profit, we consider that the consumer protection institution includes patrimonial juridical relations, but also personal-non-patrimonial (cannot be evaluated in cash), considering the social nature of this law branch.

The specialty literature in the Romanian commercial law deals with the field of the consumer's juridical protection as a juridical institution. We consider that one can speak about a special law, component of the commercial law, which deals with the field of the consumer's juridical protection. [25, p. 18]

As for the commercial law, we consider that it includes institutions belonging to several branches of law, such as the general theory of law, civil law, banking law, labour law, European community law.

The consumer protection institution is that juridical institution regulating patrimonial and non-

patrimonial juridical relations established between the individuals/natural and the legal persons which are juridically equal.

The content of the juridical relation belonging to commercial law or juridical institution for consumer protection includes all subjective rights and obligations that their parts (subjects) have [7, p. 95]. Namely, the rights of the active subject and the obligations of the passive subject between which the juridical relation is established. We can mention that the elements of the content of the juridical relation belonging to commercial law or juridical institution for consumer protection are: subjective law and correlative obligations.

Between rights and obligations there is a tight interdependence relation (to each subjective right a correlative obligation corresponds and to each obligation a correlative rights of the other party corresponds).

For example in a sale-purchase contract, the seller/business operator has the right to pretend and receive the price of the sold good. To this right the correlative obligation of the buyer/consumer to pay that price corresponds. But the seller/business operator economic has the obligation to send the buyer the ownership of the sold good, and the buyer/consumer has the correlative right to obtain

the ownership of the respective thing. [25, p. 174-220]

The content of the juridical relation belonging to commercial law or juridical institution for consumer protection can be analyzed from the point of view of the two subjects: for the active subject the content of the juridical relation appears as being made up of rights, and for the passive subject the same content appears as being made of obligations.

In all cases, to any subjective right a correlative obligation corresponds (there is no right without a correlative obligation).

The subjective right is defined in specialized literature [30] as the possibility of the owner (active subject) to perform a certain behavior, guaranteed by law by the possibility to pretend the passive subject a certain corresponding behavior (that can be imposed, when necessary, by state constraining force).

Unlike obligation matter, as we will see below, the classification of subjective civil rights was not approached in the new Civil Code depending on various criteria. Thereby we will report on the classification realised by the specialized literature [30] depending on various criteria.

We consider that this classification, performed by civil law specialized literature, can be extended in the field of commercial law, special branch of private law.

Depending on subjective rights opposability, we distinguish:

1. Absolute subjective rights, those rights giving their owner the possibility to exert by himself/herself, all other law subjects have the obligation not to prevent in any way exercising of the respective rights by their owner.

The absolute civil subjective right had identified (determined) only its owner, the passive subject if unidentified (made of all other civil right subjects having the negative obligation of not doing – not touching the prerogatives of the right owner). Thus the absolute civil subjective right is opposable to all.

2. Relative subjective rights, those rights allowing their owner to pretend the passive subject a certain behavior (to give, to do or not to do) without which their rights cannot be implemented. A relative right has known both active and passive subjects, and to the owner right the obligation of the passive subject corresponds. Thus, this rights is opposable only to the passive subject of the respective juridical relation.

Depending on their content, the subjective rights are:

1. Patrimonial subjective rights, whose content cannot be expressed in money. They fall into actual and receivable rights.

2. Un-patrimonial (personal subjective rights), whose content cannot be expressed in money.

We envisage those elements identifying individuals/natural persons (name, residence, civil status) and legal entities (name and head office), existence and physical integrity of the person (right to life, honor) and the rights resulted from intellectual creation.

By relating to a relation in which certain subjective rights are related to other subjective rights (the distinction operates in the matter or patrimonial rights), we distinguish:

1. Main subjective rights, which are subjective rights whose situation does not depend on another subjective right.

This category includes the ownership right.

2. Accessory subjective rights, representing subjective rights whose juridical situation depends on that of another subjective right.

Thus, in the matter of obligations, a creditor's rights to a receivable is principal, and the right to interest is accessory.

Considering the certainty degree given to the owners of subjective rights, we distinguish:

1. Pure and simple subjective rights, those subjective rights exercised by their owner, that do not depend on any future circumstance and that can be exercised unconditionally as soon as they are born.

2. Subjective rights affected by modalities, those subjective rights whose existence or possibility to be exercised depends on a future circumstance that can be certain (for the term) or uncertain (for the condition). Aspects related to modalities that can affect a right or an obligation will be analyzed in the matter of obligations.

The reciprocity of the subjective right is the obligation, namely the civil subjective right relation by which the debtor is obliged towards the creditor to give, to do or not to do something, under constraint exercised by the state.

It is worth noticing that the new Civil Code treats the obligation by reporting to the contract, and not to the juridical act, as treated up to the publishing of the new Civil Code in the specialized doctrine.

The Civil Code classifies civil obligations in art. 1396-1462. We consider that this classification can be extended in the field of commercial law as well, also branches of private law.

Thus, obligations can be pure and simple and affected by modalities. The pure and simple obligations are those that are not susceptible to modalities. Most of civil, commercial law obligations and pure and simple obligations.

Only a low part of civil, commercial law obligations are obligations affected by modalities, namely they are obligations whose fulfillment of dissolution depends on a modality. The modalities that can affect remaining obligations are: condition, term and task. The most important modalities and the ones most frequently met in practice are regulated by the Civil Code (CC) in art. 1399-1410 (condition) and art. 1411-1420 (term).

Art. 1421 CC classifies obligations into divisible and indivisible.

The obligation is divisible among several debtors in case they are obliged towards the creditor to the same performance, but each of them cannot be constrained to executing the obligation unless separate and within the limit of their part from the debt.

Although law does not define it, the indivisible obligation among several debtors presupposes the other way around, namely the debtors to be obliged towards the creditor to the same performance, as either of them may be constrained to execute the obligation and then to recover the owed part from the other debtors.

The obligation is divisible among several creditors if any of them cannot ask from the common debtor anything else but the execution of his/her part of the receivable. In the same way, although law does not define it, the indivisible obligation among several creditors presupposes the other way around. Namely, each of the creditors can ask from the common debtor the execution of the entire receivable, owing then to the other creditors their part from the receivable cashed.

However, law characterizes individual obligation, in the article providing the effects of the indivisible obligation (art. 1425 CC).

Thus, the indivisible obligation is not divided between debtors, between creditors nor between their inheritors, it being possible for each of the debtors or of their inheritors to be constrained separately to the execution of the entire obligation and, respectively, each of the creditors or each of their inheritors can ask for entire execution.

The legal rule establishes that the obligation is considered (presumably) as being divisible. Exceptions are the cases when:

a) indivisibility of the obligation was stipulated expressly in the contract concluded by the parties,

b) the object of the obligation is not, due to its nature, susceptible for material or intellectual division.

Suspension of extinctive prescription towards one of the creditors or debtors of an indivisible obligation produces effects towards the others as well. Also, interruption of extinctive prescription about one of the creditors or debtors of a indivisible obligation produces effects towards the others as well.

Chapter III of the Civil Code treats alternative obligations and facultative obligations.

Alternative obligation is the obligation whose object is two main performances, and the execution of one of them frees the debtor from the entire obligation. The obligation remains alternative also if one of the performance was impossible to be de executed at the moment when the obligation is born.

Facultative obligation is the obligation whose object is only one main performance, of which the debtor can free by executing another determined performance. The debtor is freed also in case when without their guilt, the main performance becomes impossible to be executed.

Art. 1165 CC classifies obligations depending on the origins of civil obligations. The obligations have their origins in the contract as well, unilateral act, business management, becoming rich without any rights cause, not owned payment, illicit deed or from any other act or fact on which lay connects occurrence of an obligation.

Civil obligations are classified by specialized literature [30, p. 153-160] depending on various criteria.

Considering the object of civil obligations, we envisage:

1. Civil obligation to give consisting in the duty to constitute or to move an actual right.

For example, the obligation of the selling company to send the buying consumer the ownership right upon the sold good.

2. Civil obligation to do which is the duty to execute a work or to provide a service or to submit a thing.

For example, the obligation of the selling company to submit the sold thing to the buying consumer.

3. Civil obligation not to do something (correlative obligation of an absolute right)

consisting in the general duty of not doing anything to touch that right.

For example, the obligation undertaken by the author of a monograph not to republish that book to another publishing house.

The civil obligations fall into: positive civil obligations (to give and to do) and negative civil obligations (not to do).

Also, we can classify civil obligations into:

1. Determined (or result) civil obligations represent debtor's duty to obtain a determined result.

For example, the obligation of the selling company to observe consumer's ownership upon the house it sold to the consumer.

2. Prudence (diligence or means) civil obligations represent debtor's duty to everything possible in order to obtain a result, without obliging however to realize the concrete result.

For example, the obligation of the National Authority for Consumer Protection to represent and assist is legal courts the consumer having submitted a justified complaint for infringement of a right of a professional person or by a professional person.

Depending on the power of their sanctions, civil obligations divide into:

1. Perfect, civil obligations, namely those obligations including the possibility to go to legal courts. Most obligations belong to this category.

2. Natural, imperfect, obligations, not including the possibility to go to legal courts, whose execution of the obligation cannot be obtained by forced way, but at the same time with the voluntarily execution by the debtor, the creditor cannot be obliged to return it. They represent an intermediary category between juridical obligation and moral obligation, which lacks the constraint exercised by the state.

For example, for a right affected by extinctive prescription, its correlative obligation lacks juridical sanction. If this obligation was voluntarily executed, it is not possible to ask for its restitution.

Considering the opposability of civil obligations, we distinguish between:

1. Common civil obligation, opposable only to the debtor is the obligation that is attached to (belongs to) the debtor connected to which it was generated. Most civil obligations are like that.

2. Civil obligation opposable to third persons as well is tightly connected to a good. The creditor cannot realize his/her right but with the contribution of the current owner of the actual right upon that good kept as well by the fulfillment of a previously generated obligation.

For example, the obligation of a buyer of a good being the object of a location (rent) contract. If the

tenant (the person renting) sells the rented thing, the buyer is obliged to observe the location made before selling.

3. Actual civil obligation represents the duty of a good owner generated by the special importance of such good for the community.

For example, the obligation of a owner of a house considered monument to observe its external architecture.

We also consider that this classification, made by specialized literature in civil law field can be extended in the field of commercial law, special branch of private law.

2 Consumer protection, external category of the stakeholders of business operators, integrated into corporate social responsibility

The extension of the community legislation and the Romanian legislation regarding the protection of this object of the commercial relations – the consumer – shows a special importance granted, both at community and internal level, to the consumers of commercial goods and services. However, although the legislation is sufficient, the issue resulting from the marketing researches performed by means of this scientific investigation is the inefficiency of the activity performed by the Romanian consumer protection public organisms.

The consumer is legally [32] defined as any natural person or group of natural persons constituted in associations, which purchases, acquires, uses or consumes products outside their professional or commercial activity.

The consumer protection is a concept representing all the dispositions regarding the public or private initiative, meant to continuously provide and improve the observance of the consumers' or users' interests. [19] In the consumer protection field, consumers' movements are active.

Consumerism is a social movement which has the purpose of determining the traders to grant greater attention to the needs and desires of the consumers. [20] The manufacturers are also included in the business operators' category because they perform a commercial activity. Consumerism has originated in the United States of America at the beginning of the 90s, and has been connected to the scandals which have occurred during that period in the food and pharmacy industry. The second movement of the consumers, in the 30s, has been connected with a scandal, also from the pharmacy

industry. The third movement of the consumers has begun in the 60s when the consumers, better educated, were unsatisfied by the activity of the American institutions. The American commercial companies have been accused of unethical practices, damaging for consumers. The consumers' rights originate in the Charter of Consumer Rights defined by the American president J. F. Kennedy, on 15 March 1962, under a special message addressed to the USA Congress. The main categories of consumer rights, included in that charter, have been: the right to safety and to be informed, to choose, and to be listened. The American Congress has investigated certain industries, and has proposed the legislation on consumer protection. [21] Since then, several consumers' organizations have been constituted, and a series of consumer protection laws have been adopted. The consumerist movement has globally and territorially evolved, and has become very strong also in Europe.

The consumers' associations are juridical organization forms, proper to the consumers, non-governmental and non-profit, having the purpose of defending the rights and legitimate interests of their members and/or consumers in general before the authorities and the commercial companies. [9] The consumers' associations are also called "consumerist". They watch, next to other public, central and local organisms responsible for the consumer protection, over the observance of the consumers' fundamental rights.

Depending on the activity range criterion, the following can be identified: local consumer associations organized at the level of a consumption area, aiming at concrete objectives, national consumer associations activating at the level of a country, and international consumer associations. An example of an international consumer association is the International Organization of Consumers Unions, grouping associations from over 40 states.

However, American professor Kotler P. and his collaborators [15] consider that, in this field, of the consumer protection, the consumers do not have only rights, but also the responsibility to protect themselves. The consumer protection obligation is not only the task of the public and private organisms.

The Romanian explanatory dictionary (DEX On Line. Romanian Dictionary) [7] defines responsibility as a conscious attitude, a sense of liability for the social obligations; or a task, liability which somebody takes.

Other authors [6] support the definition given to the social responsibility by the European

Commission and underline the fact that the social responsibility is that behavior through which business operators decide, without them being imposed to, to integrate several ecological or social objectives among their preoccupations, thus creating a new type of relation or partnerships with several groups of interests within the company.

According to Kotler P., [16] the business operators are often put in the position to choose between two ethically opposed variants: either take the honorable way and make the decent decision, or take the dishonorable way and betray the social partners' trust.

The Romanian authors [14] dealing with the corporate social responsibility field include the social partners from the stakeholders' category. The "stakeholder" term derives from the following terms: stake meaning interest, and holder meaning owner, both English terms. Thus, stakeholders are those categories of persons which have an interest in developing the activity of the respective business operator.

In our opinion, [26, p. 34-43, 87-114] also the natural environment, besides the consumers, can and is affected by the activity of the business operators. Within this scientific research, we have chosen the use of the term natural environment because the term surrounding environment is considered a pleonasm in the juridical field (and not only), but in the economic field it is used in order to define the nature economic organization field. This term is also used by Kotler P. [specifying in 11 p. 130] that the natural environment includes the natural resources needed by the economic processes or which are affected by the marketing activities.

A socially responsible business operator must give increased attention to the responsible use of the natural resources, but also to the natural environment pollution, seeking to prevent the degradation of the environment, which, in the end, affects all of us.

All the stakeholders of those business operators are considered an object of the activity of the socially responsible entity: consumers, natural environment, employees, etc. Another reason is the one of the similitude, in the sense in which this term of "stakeholder" is used also in the foreign specialized literature of the states in which English is not an official language, for instance the specialized literature from Spain, when corporate social responsibility is dealt with. [12]

The commercial companies promote their interests in comparison with several socio-professional groups, named stakeholders. Stakeholders are divided [27] into two main

categories: external - business partners, suppliers, consumers, local communities, natural environment, future generations - and internal - employees, shareholders, managers, and owners. Starting from the two categories of stakeholders, without excluding the interest and impact of several social responsibility practices on all categories of stakeholders, the social responsibility can be: external or internal.

4 Conclusion

The consumer rights, the obligations of the socially responsible business operators, fall into the category of legal responsibility, component of corporate social responsibility.

The rights and obligations of the consumers and socially responsible business operators, parties in the same legal relation, represent the content of the special legal relation of the legal institution of consumer protection and this is treated in the first chapter of this study. The legal aspects were analysed, detailed and adapted to the special field of consumer legal protection.

To the same extent, the aspects related to consumer protection were analysed from a different perspective as well, from the perspective of corporate social responsibility, where consumers are part of the category of external stakeholders of the socially responsible business operator.

We consider that consumer protection needs to be analysed from this dual perspective, in an interdisciplinary and complex way. In this respect, although legal aspects have not been taken into account too much so far, we consider that the legal analysis of the relation between the socially responsible business operator and the stakeholder category of the consumers should not be neglected. In this way, it is useful for the business operators to analyse and know a complete approach of the socially responsible behaviour of the business operators in relation to consumer category.

Acknowledgements

This paper is supported by a scholarship financed by Prof. Dr. Oleg RETZER.

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This paper examines the relationship between corporate social responsibility (CSR) ratings and firm value, by using a sample of U.S. companies listed on the New York Stock Exchange and NASDAQ Stock Market, over 2008-2011. The Corporate Social Responsibility Index (CSRI) developed by Boston College Center for Corporate Citizenship and Reputation Institute was used as a proxy for corporate social responsibility. The specificity of the contract could be changed in relation to changes in society, but generally the contract remains always the source of business legitimacy (Donaldson, 1982). Regression Results Towards the Influence of Corporate Social Responsibility Index (CSRI) on Firm Value. To sum up, Business ethics and social responsibility are two concepts in the business environment. Business ethics are the moral principles a company uses to ensure all employees act in an acceptable manner when completing business functions. Social responsibility is typically an ideological theory that governments and the general public hold. In other words, business ethics mainly are used in internal companies while CSR is pointed out in the public. It is as simple as that - being an ethical company that cares for the environment and the local community is closely linked to corporate social responsibility. Having said all of this, this is why an increasing number of companies in today's business world are starting to become more ethical and implement CSR Policies. Corporate social responsibility (CSR) is also known as corporate responsibility and corporate citizenship, responsible action, responsible action constant (SRB), or the performance of social institutions. Ideally, the policy of corporate social responsibility is a compact, self-regulation and the mechanism by which the work would monitor and ensure the commitment to the law and ethical standards and international rules. (William et al, 2005). The development of the businesses in claiming the responsibility by the impact of its activities on the environment, consumers and workers, local communi