BOOK REVIEW

A MONOGRAPHIC APPROACH TO THE LEGAL PROTECTION OF CONSUMERS

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In contemporary societies where production, merchandise circulation and service performance processes are ended in consumption, in the context where the development of market economy generates the amplification of competition, it is necessary, more than ever in history, to adopt regulations specific to the relations between economic agents (professionals) and consumers, between the participants in economic processes, so that competition relations would be developed within a framework of legitimacy, loyalty and fluency, and that the market would function in normal conditions, while preventing any distortions. In an environment as such, abusive practices in the field of commerce and production should be repressed, and consumers should be protected.

A scientific literature, associated to the proliferation of juridical norms specific to this domain (consumer code, consumer law, regulations, ministerial orders etc.), was developed starting in the second half of the 19th century, and peaked during the last half of the century, being driven by the construction process of the European Union. To this theoretical context pertains the work authored by Rodica Diana APAN, entitled “The Legal Protection of Consumers. Consumer Credit and Related Fields”, Sfera juridică, Cluj-Napoca, 2007, pp. 472.

Based on an ample juridical, economic, sociological and historical documentation, on the knowledge and application of the community acquis – correlated with the laws of the European Union member states, on the methods of logical and historical analysis, on comparative, structural and longitudinal approaches, on deduction and logical demonstration – the author, lawyer and PhD lecturer by profession, focuses her analyses and reflections on the legal means of consumer protection, instituted on grounds of the

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consumer credit contract, effecting the necessary connections with the regulations securing consumer protection in the following areas: advertising; information; abusive clauses in contracts concluded between traders (professionals) and consumers; contracts concluded outside the points of sale; distance contracts and distance marketing of financial services; consumer access to justice; extrajudicial and judicial procedures for solving litigations between traders and consumers. As the author herself states, “the reference points for the proposed mission consisted of the relation of national regulations in the field of consumer credit contracts, as well as its related fields, as a result of the harmonization of the community acquis to the regulations in some member states of the European Union, to the corresponding doctrine and jurisprudence”.

The work is structured into six parts, followed by final conclusions and an alphabetical index. Part I is entitled “The regulation of trader-consumer relations. General regulations”, where the author’s considerations are formulated with respect to the consumer protection concept, the historical-economic premises of the emergence of relations between professionals and consumers, the community dimension of the “consumer protection” notion, general regulations regarding the legal means of consumer protection, the regulation of consumer rights and obligations, the interdictions of economic agents according to the Law no. 296 of 2004 regarding Consumer Code.

In the second part, targeting the definition of the consumer credit contract, its scope of application, classification, the parties of the contract, the credit documentation and the credit guaranteeing in community and national regulations, the author makes reference to both the community legislation and to that of the European Union member states – especially the French one, in the consumer credit system, adding personal contributions in terms of synthesis and interpretation of community and national regulations, of application, of the definition of parties and the classification of consumer credit contracts. This theoretical undertaking is facilitated and updated by applying the principles and strategic directions of European structures, community law, and implicitly the directives of the European Parliament and Council with regard to the harmonization of legislative, regulatory and administrative dispositions of the member states.

In the third part, entitled “Means securing the protection of consumers’ economic interests, as well as their health and safety”, the author analyzes, in technical details, the means securing the protection of consumers’ economic interests, the regulation of advertising and information, the protection of a person’s right to private life, the regulation of special consumer rights and of some interdictions for traders, of the means (see Title II) securing the protection of life, health and safety of consumers by regulating general safety and product compliance.

The fourth part analyses “the means for protecting consumers’ economic interests in the consumer credit contract, instituted through the regulation of abusive clauses, of product guaranteeing and commercial practices” (pp. 227-296). This part shines out not only through the logical and systematic character of the discourse, but also through the elements of juridical “technique”, interpretations and conclusions that can be useful not only to jurists with an expertise in the field, but also to managers and staff members representing both professionals (traders) and consumers. The series of analyses, definitions, classifications, deductions regarding the notions of consumer, trader, abusive clause, criteria for assessment of the abusive character of the clause, the right to unilateral denunciation of the contract by the consumer, the institution of obligations held by the trader, juridical means
for protecting consumers’ rights and interests, regulation of contracts concluded outside the points of sale and distance contracts target the directive proposals regarding unfair commercial practices of companies with relation to consumers within the internal market of the European Union.

The fifth part deals with the internal and private international-law contractual relations between traders and consumers, with a personal emphasis on the analysis of extrajudicial procedures for solving consumer litigations and the super-indebtedness procedure. Using these theoretical, jurisprudential reference points of the European law of contracts, the author justifies the need for revising the community acquis as the most appropriate path to follow, and formulates de lege ferenda proposals regarding the completion, at a national level, of a protection system for consumers in the field of consumer credit, with the regulation of the super-indebtedness procedure for the person and his/her family.

In the sixth part, entitled “Accredited associations and institutions in trader-consumer relations”, the author utilizes the monographic methodology and presents a content that is close to what monograph signifies in the Gustian sense. Thus, the chapter deals with accredited institutions in the field of consumer protection functioning in member states of the European Union: specialized and unspecialized institutions, the Ombudsman – as an accredited institution for securing consumer protection in connection to “parapublic bodies” (pp.397-398), “consultative bodies” (pp.398 - 400) and “private structures” such as mediators in enterprises or per activity sectors. The author’s explicative undertaking continued in the direction of particularization in the chapter entitled “Accredited public institutions in the field of consumer protection at a national level”, which presents, in different sections: the National Authority for Consumer Protection (ANPC); the Competition Council; the Inter-ministerial Committee for the Surveillance of Product and Service Market and Consumer Protection; Consultative bodies; the People’s Advocate; Bodies and Sections having general competences and specialized organs. On a different plane are presented the consumer protection associations – starting with the genesis, status and role of each, in member states of the European Union and then those at a national level (associations, consumer protection federations).

On a general survey, while trying to distinguish strong points from the weak ones, the reviewed work stands out by the impeccable logic of its discourse, systematization, application of the systemic analysis method by giving priority to the whole with respect to its components, the clear formulation of the essence and the placement of principles in their right place, in a prevalently deductive approach. Likewise, the numerous forays into the history of the analysed issues come to prepare the reader and justify the inference of certain conclusions. For example, in the context of a historical analysis, the author expresses her conviction that “consumer protection is currently carried out in interferential ways both economically and socially, implemented by governments, through public authorities and institutions, by consumers united in consumer protection associations, by non-governmental organizations, all seeking to protect consumers, directly or indirectly, against the risks of purchasing products that might be detrimental to their lives, health or which might affect their economic rights and interests” (p.9).

At the same time, the author proves herself to be a very good knower of legal sciences in general, and of commercial law, community law, consumer law, comparative civil law, and European construction and public policies in particular, which enabled her to approach, in an analytic and substantiated way, the desiderate of harmonizing the member states’
legislation with the community *acquis* through the ensemble of regulations having the purpose of securing consumer protection, instituted by the European Parliament and Council since 1986 and targeting the following domains: advertising, information, abusive clauses, contracts concluded outside the points of sale, distance contracts, consumer credit, responsibility for product defects, guaranteeing of consumption goods, consumer safety, *time-sharing*, the ability of consumer protection associations to promote ceasing actions in terms of consumer interest protection, the regulation of competence in consumer contracts – as private international law relations, the protection of individuals in matters of personal data processing and free circulation of these data. Departing from such premises, the author is certain that "in establishing the significance held by the ‘consumer protection’ concept at this moment, a special regard is given, in this study, to the community dimension of the concept, acquired alongside the collective one, as securing consumer protection cannot be dissociated from the general objectives of creating and operating the common market of the European Union, since it is an integral part of the latter. The creation of the common market involved the implementation of a set of norms and institutions having applicability and competences in the member States, in the field of consumer protection” (p.431).

The personal mark of the author can be easily observed in the writing style, characterized by precision and clarity, by a logical organization of information in defining, classifying and dividing notions, in the underlining made for the purpose of emphasising the essence. For example, an underline in a text that has a paradigmatic position within a chapter is the following: the plenary manifestation of the complex mission that is consumer protection has determined, in the field of public preoccupations, a change in the hierarchy of priorities, so that consumerist ideals were appreciated as essential, and through an ample evolutional process, each state, by means of its government, reconsidering the importance of consumption issues in the economic-social plane, granted them protection, as well as regulations, by setting up solid institutional structures. Therefore, in the member States, aspects regarding consumer protection constitute a constant preoccupation of public powers, mirrored in the place held by governmental institutions, accredited for this purpose by governmental structures” (p.392).

As less accomplished points, leaving aside some redundant reprisals and the absence of a reference list at the end of the volume, we might emphasise the outage of information in the context where the dynamic of normative acts is an evident reality both at a national level, and as part of the European Union. Thus, since 2007 and up until now, new regulations have been recorded, such as: Decision no. 284/2009 regarding the organization and operation of the National Authority for Consumer Protection, Law no. 363/2007 regarding the combating of unfair trade practices in relation to consumers and the harmonization of regulations with the European legislation regarding consumer protection, Regulation (EC) no. 765/2008 of the European Parliament and Council of 9 July 2008 establishing the accreditation and surveillance requirements of the market, with regard to the commercialization of products and the abrogation of Regulation (EEC) no. 339/1993, which will enter into force on January 1, 2010, and one may continue exemplifying numerous law and regulation amendments. A part of these normative updates are published in the volume: “Consumer Code and Related Laws”, Editura C.H. Beck, București, 2008 (containing updates as recent as September 2008). Yet, legislative and normative alterations at the level of the European Union and of member states necessarily presuppose appropriate conceptualizations and interpretations.
As a whole, the work provides a theoretical-explicative paradigm resulting from the application of the juridical model of the European Union, of the community acquis, of the experience of member states, of their doctrine and jurisprudence. With respect to these parameters, the work entitled The Legal Protection of Consumers contains a solid methodological and theoretical framework, able to guide practices in the field of consumer protection, in order to place jurisprudence upon firm bases and to allow the de lege ferenda formulation in the field. Likewise, the paradigm and reasons of this work may serve for perfecting the process of elaborating public policies in the field, at a national and community level.

About the author

Rodica Diana APAN is a professor of the Chair of economic disciplines, within the Faculty of Sciences, Northern University of Baia Mare, where she has been teaching, for the last few years, such disciplines as: Commercial Law, Commercial Procedures and Contracts, Business Law, Community Law, Consumer Protection, Economic Law and Legislation and is currently the president of the University Ethics Commission.

After graduating from the Pedagogic Secondary School in Carei, she attended the courses of the Faculty of Law at the “Babeș – Bolyai” University of Cluj – Napoca, obtaining her Bachelor Degree in 1988, and in 2006 she completed her doctoral studies, specializing in Commercial Law. In the same period she obtained her Master Degree in Management – Business Management and Administration. She is working as a lawyer within the Bar Association of Cluj – Napoca, specialized in juridical consultancy in the field of Business Law.

As a scientific researcher, her main areas of interest are Commercial Law, Business Law, Consumer Protection, Romanian and European Union economic legislation. The outcomes of her research activities were materialized in the publication of academic courses and monographs such as: “The General Theory of Business Law”, Editura Sfera, Cluj – Napoca, 2007; “Consumer Protection – Consumption Credit and Related Areas” – monograph, Editura Sfera, Cluj – Napoca, 2007; “Consumption Credit – The Protection of Consumers’ Economic Interests” – monograph, Editura Sfera, Cluj–Napoca, 2008; “Electronic Business” – co-author, Editura RISOPRINT, Cluj – Napoca, 2005; of 17 articles issued in specialized reviews for international readerships and in periodicals within the country, in 31 presences in national and international conferences and symposiums resulting in the publication of studies in the volumes of these scientific manifestations, in the participation in nine research projects and contracts – the most important of which are CEEPUS (Central European Exchange Program for University Studies) and GRUNDTVIG (subcomponent of the Socrates II program, which seeks to strengthen the European dimension in education and to apply the lifelong learning principle).