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AMICABLE SETTLEMENT OF CONFLICTS BETWEEN AGRI-FOOD PRODUCERS AND CONSUMERS

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Summary: *Similarly to how not knowing the laws and obligations resting upon a person will not exempt that person from liability, consumers not knowing their rights and not using them might place them into a position of inferiority when it comes to the relationships with the producers or distributors of agri-food products. Although, theoretically, such relationships mean that the parties are equal from a legal point of view, having correlative rights and obligations, in fact, given the nature of the products making up the object of the relationship between the producer and consumer, the consumer is place a priori in a position where he has to award maximum diligence, since we are talking about actions that might have consequences upon his health and even life. Returning to the previous state, fixing contingent damages and regaining the mutual respect and trust inherent to a healthy commercial demeanor, in case of conflict, determines the studying of alternative settlement procedures for conflicts, a stand out being the procedure of mediation, a procedure that is an alternative to the court of law. The institution of mediation can be understood through an exhaustive presentation of the framework law in the field, of the related laws, these being different from the European law in the field, the latter being included ope legis into the national framework law, through the ratification process or through undertaking the community acquis.*

Keywords: *mediation, consumer, agri-food, producer, conflict*

INTRODUCTION

In Europe there are presently 500 million product and service consumers, with the highest, most needed and most generalized consumption being that of the agri-food products. This state of fact has caused the emergence of multiple forms of protection for the European consumers, one of them being the possibility to resort to a procedure to mediate conflicts occurring between the producer and the consumer, in view of fixing the prejudices caused to the latter. According to the provisions of Law 192/2006, mediation represents a method of settling conflict amicably, with the help of a third person specialized as a mediator, under conditions of neutrality, impartiality, confidentiality and having the free consent of the parties. Mediation is based on the trust that the parties confer to the mediator, as a person that is able to facilitate the negotiations between them and to support them towards the settlement of the conflict, through reaching solutions that are mutually convenient, efficient and long lasting¹ [17]. According to the provisions of the lawmaker, mediation pursues the settlement of conflicts by way of negotiations. Thus, the parties are not trying to settle the conflict from a contradictory standpoint, as it is in the case of legal actions, but rather from a reconciling standpoint. Natural persons and legal persons might request mediation even after a lawsuit was started at the competent courts of law. By way of mediation, any conflict can be settled for any civil, commercial, family, criminal, consumer protection and other matters.

MATERIALS AND WORK METHODS

In order to accomplish this study, the existing regulatory documents were used: regulations, directives, recommendations, Romania and Bulgaria's Treaty of Accession to the

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¹ Law no. 192 concerning mediation and the regulation of the mediator profession from May 16, 2006. Off. Gaz. no. 441 of May 22, 2006, as amended and completed by Law no. 370/2009, G.O. no. 13/2010 for the amendment and completion of certain regulatory documents within the legal field in order to transpose Directive 2006/123/CE of the European Parliament and Council of December 12, 2006 concerning services on the internal market, Off. Gaz. no. 70 of January 30, 2010.

European Union, as well as other constitutive and changing treaties, other regulatory documents at European Union level; national regulatory documents: laws, ordinances, decisions, codes; jurisprudence and legal doctrine. The interpretation of law concerning mediation and consumer protection is accomplished through logical-rational operations that seek to clarify and explain the contents and meaning of norms, for the purpose of their just application, through the accurate classifying of various situations from the practical life of the agri-food producer-consumer relationships. Among these there are methods such as literary or declarative, extensive, restrictive interpretation, logical, grammatical, systematic interpretation, by correlation to other legal provisions or the historical-teleological interpretation, by determining the practical purpose and utility considered by the lawmaker at the time of issuing the legal norm concerning the mediation and consumer protection.

RESULTS AND DISCUSSIONS

Consumers from the European Union have a series of tools and networks available, meant to provide them useful information and to help them to remedy the challenges that they might face on the internal market. One of the highlights among these tools and networks is **The European Consumer Centres Network (ECC)**². Each member state of the European Union has a *national contact point*, member of the ECC network. Counseling concerning cross-border litigations is provided by the European Consumer Centres Network (*ECC-Net*)³ [12]. Pursuant to a resolution of the Council from May 25, 2000, the EEJ-Net Network was established, which seeks to allow the settlement of complaints in an amicable way. Starting with January 1, 2008, Romania's European Consumer Centre has joined the EEC-Net network set up at European Union level in order to increase consumer trust in the unique internal market, by providing a wide range of services to the consumers, from informing them about their rights and to supporting them in the settlement of the issues they are facing in cases where they have made purchases in another European state (cross-border)⁴ [10]. As early as its establishment, ECC Romania has awarded a great importance to informing consumers concerning the alternative means of settling cross-border litigations, with mediation playing an important role. As opposed to Poland, where 90% of the agri-food products being traded come from internal sources, in our country the rate of imports (especially imports from other EU states) is still very high, meaning that the cross-border mediation procedure - for disparities that target these types of goods - has to be a timely and appealing procedure. Upon the European Commission's initiative, at the beginning of the 90's, the first Euro-offices were established, with the purpose of providing information concerning the possibilities on the internal market and consumer rights.

By the necessity of aligning the Romanian internal law to the *community acquis*, as to what concerns consumer protection, the Consumption code⁵ [18] targets the regulation of the legal relationships created between economic operators and consumers regarding the purchasing of products, goods and services, including financial services. The law in this matter ensures the required framework for the complete and accurate information of the consumers about the essential characteristics and the standards imposed to certain categories of products, for the defense and protection of the legitimate rights and interests of the consumers against certain abusive practices. Art.27⁶ of law no. 296/2004 exhaustively lists the rights of the consumers protected by the

² Co-financed by the European Commission;

³ cec.europa.eu/consumers/redress/ecc_network/index_en;

⁴ Address no.2055/04.12.2013 of Romania's European Consumer Centre to the Romanian Mediation Council;

⁵ Law concerning the consumption code, law no. 296/2004, republished in the Off. Gaz. no. 224 of March 24, 2008;

⁶ Consumers benefit from the following rights:

- to be protected against the risk of purchasing a product or have a service rendered to them which might bring prejudice to their life, health or safety, or to bring harm to their legitimate rights and interests;
- to be completely, accurately and precisely informed about the essential characteristics of products and services, so that the decision they are taking in relation to them will offer a better answer to their needs, as well as to be educated in their quality of consumers;

consumption code, rights that, contrary to the good commercial practices, are being breached, sometimes in bad faith or abusively, by the product and service providers. Misunderstandings arising between the parties entering into a conflict (seller/professional-buyer/consumer) can be settled by way of mediation.

Mediation, as a form of settling conflicts, has started to be promoted at European level since 1996, while in 1997, at the European Conference on conflict prevention, the Amsterdam Appeal was launched for creating an European platform for the prevention of conflicts and the development of peace⁷. In 2000, the European Commission has adopted the Conclusions concerning the alternative methods for settling litigations in civil and commercial matters, in view of simplifying and improving the access to justice. In 2002, the European Commission has published the *Green card concerning the alternative methods for dispute resolution in civil and commercial matters*, while, in October 2004, the European Union has forwarded a proposal concerning certain aspects for mediating disputes in civil and commercial relationships. Therefore, a series of community acts were adopted which help to support the reform in justice and to promote mediation as an alternative means for amicable dispute resolution⁸ [19].

The emergence in Romania of a legal framework concerning the activity of mediation is the result of an ample process of legislative efforts which materialized in the issuance of a perfectible law, Law no. 192/2006⁹. The law concerning mediation and the regulation of the profession of mediator observes the recommendations of the European Union and targets the expansion of the existing regulatory framework, so that mediation can become a practical and functional institution.

An important step was taken by the adoption of Directive SAL¹⁰ [15] and of the SOL Regulation¹¹, both occurring as a consequence of a proposal submitted by the European Commission in 2011, with the purpose of improving the "functioning of the internal retail market and, particularly, consolidating the measures for compensating consumers"¹² [5]. They mainly target the agri-food market of the European Union, but other markets of goods, products and services are targeted as well. The Directive and Regulation were adopted on March 12, 2013 by the European Parliament, with a large majority of the votes (617 votes for, 51 against and 5 abstentions) and were entered into force within 20 days from being published in the Official Journal of the European Union¹³. Member states will have 24 months from the date the directive enters into force, meaning mid-2015, to transpose them into their national legislation. The SOL platform will become operational six months after the transposition deadline has expired.

These regulatory acts seeks to increase the number of SAL entities at the level of the European Union member states and to improve the quality of the services provided by these

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- to have access to markets ensuring a wide range of quality products and services;
 - to be compensated in a real and appropriate manner for the damages caused by an unsatisfactory quality of products and services, using the means provided by the law for this purpose;
 - to be organized into consumer associations, to the end of protecting their rights and interests;
 - to refuse the conclusion of agreements with abusive clauses, according to the applicable legal provisions;
 - to not be denied by an economic operator to obtain a benefit that is expressly provided by the law.

⁷ In 1998, the first Recommendation of the Committee of Ministers of the Europe Council was adopted for the use of mediation in legal causes relating to family matters (mostly for the settlement of disputes concerning the custody of children). The declared purpose, at European level, for promoting mediation is that of increasing the quality of the legal act by relieving the courts from causes that would fully or mostly involve agreements between the parties.

⁸ Recommendation REC (98)1, targeting mediation in family related matters, Recommendation REC (2002) 10 targeting mediation in civil matters. Recommendation REC (99) 19 concerning mediation in criminal matters, Recommendation REC (2001) on the alternatives to trials for disputes between administrative authorities and private parties. Directive 2006/123/EC, Directive 2008/52/EC

⁹ amended and completed, as expected, by Law no. 370/2009, Law no. 115/2012, EGO 90/2013, EGO 4/2013, Law no. 214/2013;

¹⁰ Directive 2013/11/EU concerning the Alternative Resolution of Disputes

¹¹ Online Resolution of Disputes

¹² Gorghiu Alina, Mediatornet

¹³ Published in the Official Journal of the European Union on June 21, 2013.

entities, with the purpose of encouraging the settlement of disputes between consumers and professionals outside of the law. The SAL entity is an extrajudicial entity involving a neutral party (mediator, peace-maker, ombudsman etc.) that proposes or imposes a resource that helps the parties to reach a mutual solution themselves.

It was found, at the level of the European Union, that financial losses suffered by the consumers due to purchasing goods and services were of 0.4% of the EU GDP.

The SAL Directive guarantees European consumers the chance to solve their differences in as short time as possible, with lower costs, thus offering an alternative to the classic legal methods. Cross-border disputes represent a large part of the existing disputes between consumers and retailers and, therefore, there was an existing need for a unitary, coherent regulation at European level. Using alternative means of dispute resolution is beneficial for professionals as well, who avoid the bad publicity associated with litigation in a court of law and the costs of the entire trial, in the event that the consumer wins the dispute. The European food market, in essence, is one of the most diffuse, with numerous examples in which certain products are originated from one of the European Union member states, but is traded in a completely different part of the Union, due to the weather and pedogeographic cultural conditions, which are extremely diverse within the old continent.

The alternative resolution of disputes (SAL) helps the consumers of agri-food products to settle disputes with the producers/professionals¹⁴ when they are faced with an issue connected to certain retail or wholesale products purchased, such as, in the event that a professional refuses to replace a product or to operate a reimbursement to which the consumer is entitled.

As far as SOL entities go, these are entities offering services online integrally and are named online dispute resolution entities. This method can assist with the settlement of disputes concerning online purchases, in the event that the consumer and the producer/farmer/professional are far apart from each other.

The SAL and SOL procedures are usually cheap, simple and fast procedures and, as such, they are beneficial not only for the consumers, but for the producers as well; therefore, besides eliminating costs and procedures relating to the classic, legal way of resolution, the expediency of such procedures can be highlighted in cases where the dispute is carried over perishable goods, where the hastiness of settling the dispute between producer and consumer is equated to avoiding that the goods disappear and that the damage is undertaken.

It is estimated that at the time of the SOL platform being implemented by the member states, the effective SOL procedures will stimulate online purchases, specifically those from producers residing in other EU countries. The development of online and cross-border retail in the EU will offer the consumers further possibilities to choose and will help them to obtain the best quality-price ratio. Although, mostly, this type of retail is and will be perfected for non-food material goods, it can be used on canned goods, but mostly on agricultural goods, equipment and combiners.

Usually, the alternative means for dispute resolution are easier to use than the legal procedure, while also faster and cheaper. These bring a series of practical advantages, of which we list those provided in the directive:

- The majority of issues submitted to SAL are settled within a timeframe of no more than 90 days;

- The large majority of the SAL procedures are free for the consumers or, in the event that they carry costs, their price in relation to the cost of a traditional trial is at least 80% cheaper. This is due to the short time in which an agreement can be reached, the lack of accessory expenses (transport, accommodation, witnesses, allowances etc), the lack of trial expenses (no legal fees), while, through an amicable settlement, the commercial relationships and practices (offers, refusals etc.) agreed by the parties can be maintained. The European Commission is of the opinion that such costs should not exceed the amount of 50 Euros.

¹⁴ Traders, called as such in the old Commercial Code. According to the New Civil Code, they are called *professionals*. In the specific laws concerning consumer protection, as well as in other member states, the used term is that of *retailer*.

At the present time, there is a public debate over a legislative project which intends to establish - under the coordination of the National Authority for Consumer Protection¹⁵ [11] (ANPC) - a single SAL entity, a thesis that is objectionable in a justified manner, since it would mean a genuine practice of a monopoly in the field. At the level of 2013, in the European Union, approximately 750 SAL entities were established, with the directive in the field making reference to setting up of entities at the level of the member states, which leads us to conclude that the establishment of a single entity in Romania would represent a profound inconsistency and would raise doubts of monopolistic practices over the settlement of approx. 45,000 annual complaints in the field of consumer protection by ANPC exclusively.

CONCLUSIONS

We consider that the amicable resolution of disputes arising between the producers, retailers and consumers of agri-food products concerns the entire European community, particularly the emerging states, states from the former socialist bloc, which are required, considering their status of European Union member states, to adapt, on the go, to the demands of the Union, the free and common market, the competitive relationships and also the different social and economic conditions between the West and the East.

Alternative dispute resolution procedures, done amicably, are a genuine depository of social peace, with mediation presently being their main exponent, a fact which is due to an extended interest and a national legislation which is unitarily aligned to the community priorities, to the politics of the Justice and Internal Affairs field and to the common perspective.

Approaching this theme is a desirable necessity, being considered a bridge between the field of Common Agricultural Policy and the field of Justice and Internal Affairs.

Agricultural producers and consumers becoming aware of the imperative of protecting the surrounding environment, leads to the accomplishment of a *regulating system*¹⁶ [9], which can determine a high quality production, while seriously reducing the risk of discontent among consumers in relation to agri-food products.

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