

Consumer Contract: A New General Concept or a Variety of Civil Contract?

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Abstract: The consumer contract concluded between a professional and a consumer is a recent tool of private law. Given its novel institutions, such as *precontractual obligations*, *unilateral rescind* or *presumed abusive clauses*, the consumer contract is of a controversial legal nature. Thus, questions arise, such as: Is it subject to the general contracting rules stated by the Civil Code (the common law in this matter), or are we witnessing a new general contractual theory? Since consumer law is multidisciplinary in nature, another question arises: Is the consumer contract truly a “contract” in the meaning intended by the Napoleonic Civil Code of 1804? For these reasons, we believe a succinct analysis of the relationship between the consumer contract and civil law is welcomed.

Keywords: Consumer Contract, Precontractual Obligations, Unilateral Rescind, Presumed Abusive Clauses, Contract Crisis

1. Civil contract. General rules

Contract is undoubtedly an expression of the freedom of the individual, as it is unanimously acknowledged that individual will is the fundament of contract (Panțu, 2021, p. 179). The right to enter into an agreement is a natural right of the citizen guaranteed by virtue of their membership in society (West, 2014, p. 906), enshrined internationally. From a social point of view, the contract is the main legal tool that fulfils people’s interests, also known as „the law of the parties” (given its connection to public law). Even if contract „does not always present advantages as opposed to the law (which creates the common background and protects public freedoms), it can’t be denied that it encourages the spirit of initiative, develops the sense of responsibility and contributes to organizing the future” (Fages, 2024, p. 41).

Legally, *contract* is „the agreement of will between two or more people (achieved, concluded, formed) with the intent of creating, changing or rescinding a legal relation” (article 1166 of the Civil Code). Regarding the law of contracts, will plays an essential role, as it is the basis of any legal act. Thus, individual will is the one which creates the obligations needed to satisfy the needs of co-contractors. However, agreeing wills are not autonomous; they must be analysed in relation to the respect owed to the law. The limit of the freedom to enter a contract gives people the right to enter into any contract within the limits stated by law, public order and ethics.

The general rules of contract are provided by obligation law, *an abstract area*, which plays a role in formulating the fundamental concepts. (Mainguy, 2022, p. 2-4).

The Civil Code organizes contracts based on *criteria* such as: content, relation, formation, execution, achieved goal, and so on. Thus, based on the *relation between the obligations* undertaken by the parties, contracts are: mutual and unilateral; based on the *material interest* desired by the parties, the contracts are onerous and free; based on the *ad validitatem* form required by law, contracts are consensual and solemn; based on the means by which will of the contracting parties is expressed, contracts are negotiated contracts, adhesion contracts and mandatory contracts.

A contract entails four phases: the formation of contract, conclusion of contract, effects of the contract and rescind of the contract.

1.1 Formation of the civil contract

The formation phase of the contract (which precedes its conclusion) entails the achievement of agreeing wills under the conditions stated by law (named “The essential conditions for the validity of contract” – article 1179 of the Civil Code).

The essential conditions for the validity of a contract are: “the ability to enter into a contract, the consent of the parties, a certain determined and licit object, a licit and moral cause”. Most times, the law also requires “a certain form of contract” (article 1179 second alignment of the Civil Code).

The ability to enter a contract. According to article 1180 of the Civil Code “any person who is not declared unfit by law or forbidden to enter a contract is free to conclude a contract with another party” (civil capacity is acknowledged to all people). *The category of people who lack exercise capacity:* the minor under the age of fourteen and “the person under special tutelage” (article 43 first alignment of the Civil Code). The legal documents concluded by people who have limited exercise capacity require with consent from the parents or the special guardian and, in certain cases stated by law, with consent from the family council or authorization from the tutelage court. As an exception, the person with limited exercise capacity can perform acts of conservation without authorization, administration acts which do not cause prejudice, acts of accepting an inheritance or certain liberalities without tasks, current acts of disposition for reduced values which are executed on conclusion of contract (article 41 third alignment of the Civil Code). Acts concluded by people with no exercise capacity or with limited exercise capacity or without approval from the family council or authorization from the tutelage court, when the conclusion of such acts is required by law, *are subject to annulment, even without the need to prove prejudice* (article 44 first alignment of the Civil Code).

Consent represents *the exterior manifestation of the decision* to conclude a civil legal act (Spasici, 2023, p. 54-55). In legal bilateral (or multilateral) acts, consent is “the agreement of wills” of the parties (*consursum voluntatum*). Doctrine has correctly stated that the existence of an agreement represents the fundamental characteristic of a contract (Schmidt-Szalewski J., 1990, p.545). Consent must meet the following requirements: it must come from a person with judgment, it must be expressed with the intent to produce legal effects, it must be exteriorized and it must not be affected by any consent vices. Consent is affected by vices when it is provided by error, deceit or violence (or lesion – article 1206 Civil Code). *Error* represents the false representation of a certain situation when concluding a legal act. *Deceit* consists of *fraudulent manoeuvres* by one of the parties to determine the other party to conclude the contract. *Violence* is *the fear induced* to a party to determine him or her to conclude a contract. *Lesion* is *the obvious disproportion of value* between the performance of each party at the time the contract is concluded (Boroi & Anghelescu, 2021, p. 174).

The object of contract “is the legal operation, such as the sale, lending, borrowing and other such operations, agreed upon by the parties, as it results from contractual rights and obligations” (article 1225 Civil Code). According to article 1226 first alignment of the Civil Code, the object of obligation is “the performance undertaken by the debtor” (different from the object of the performance – the derived object of the obligation – the good – material object). To be valid, the contract must meet the following *conditions*: it must exist, it must be in the civil circuit, it must be determined or determinable, and it must be possible.

Cause is the reason that determines each party to conclude the contract (article 1235 of the Civil Code). Cause is a *psychological process* which precedes the agreement of wills and it entails the reason (the motive, the impulse) which determined the parties to conclude the contract. *Ad validitatem*, the cause of the civil legal act must meet the following *requirements*: it must exist, it must be licit and moral (article 1236 first alignment of the Civil Code). French doctrine adds *another requirement* namely “the need for minimal balance: the counter performance” (Terre et al. 2019, p. 439). *The existence of a valid cause is presumed* until

proven otherwise. Thus, contract is valid “even when the cause is not expressly stated” (article 1239 of the Civil Code). According to article 1238 first alignment of the Civil Code “Lack of cause can bring upon *the annulment of contract*, except for the case in which the contract was mistakenly qualified and can cause other legal effects” (s.n.). *Ad probationem*, contract is valid even when cause is not expressly stated. The *ad probationem* form is justified by the importance of the act, but also by the practical advantage of accurately presenting the content and preventing potential litigation (Stănciulescu, 2017, p. 64).

Form represents the means by which agreeing wills are manifested with the intent to create, change or rescind a specific legal relation. Contractual formalism is manifested by the *ad validitatem* form, *ad probationem* form and the form stated by law for third party opposability (Flour, Aubert, Savaux, Andreu, 2024, 125). Contract is concluded by the *mere agreement of wills* of the parties if the law does not require certain formalities for its valid conclusion (article 1178 Civil Code). As an exception, for cadastral registration the *authentic form* is always required. For legal acts “with a value of over 250 lei” the *written form* is required. According to the Civil Code, no legal act can be proven with witnesses if the value of its object is *more than 250 lei* (article 309 second alignment of the Civil Code). The *opposability* form entails the formalities required by law for the legal act to become opposable to people who did not participate in its conclusion. Disrespecting this legal requirement brings upon the *lack of opposability* of the legal act, namely the possibility of the third party to ignore the legal act invoked by the parties. The main enforcement of the form required for opposability is *cadastral publicity*.

Annulment is the sanction which is enforceable to the contract concluded with the disrespect of the essential validity conditions stated in article 1179 of the Civil Code, “the enforceable sanction is *annulment* (article 1246 first alignment of the Civil Code). The annulled contract is “considered to never have been concluded” (article 1254 first alignment of the Civil Code). Based on the criteria of *the interest it protects*, annulment can be absolute or relative. Based on the *extent of its effects*, annulment can be total or partial (Lachieze, 2020, p. 137).

1.2. The conclusion and effects of the civil contract

Contracts are concluded by negotiation of the parties and the full acceptance of an offer to enter a contract (article 1182 first alignment of the Civil Code). Two aspects are of particular interest: the moment and the place of conclusion of the contract. “This meeting occurs as a result of the proposition one parties makes to the other in order to conclude a contract (the offer) followed by the pure and simple acceptance of the proposition by the party to which it was addressed” (Pop, Popa, Vidu, 2020, p. 73).

The time of conclusion of the contract is the time of *creation* (existence) of the contract. The time of conclusion is different depending on whether the contract arises from offer and acceptance or from negotiation.

The place of conclusion is the place where the parties are located. In case the contract arises from offer and acceptance “the contract is concluded at the time and place where acceptance reaches the person who made the offer” (article 1186 first alignment of the Civil Code).

By concluding a contract, the parties enter into legal (obligational) relations, in which the civil obligation (*lato sensu*) is formed of two inseparable sides: an active one (the creditor) and a passive one (the debtor and the debt he is obliged to pay).

Once the contract is concluded, it *produces legal effects*. The effects of contract entail two ideas: the principle of obligations and the relativity of the effects of contract. In this context, we must also mention the *principle of opposability of contract* according to which “Contract is opposable to third parties, who can’t impair the rights and obligations which arise from contract” (article 1281 Civil Code). The only exception is *simulation* (the legal operation

by which, a public legal act, apparent, named and simulated, creates another legal situation other than the one established by a hidden, secret, but accurate legal act).

According to the principle of *mandatory effects* of contract (*pacta sunt servanda*), “The contract which is validly concluded operates by power of law between contracting parties” (article 1270 first alignment of the Civil Code). The parties “are held to execute their obligations even if the execution of these obligations has become more onerous, given the increase in costs of execution or less onerous given the decrease of value of the counter performance” (article 1271 first alignment). To ensure the stability and safety of the contractual relations, the parties are held to execute their obligations *even if the execution has become more onerous* given the increase in cases of execution of the obligation or given the decrease in the value of the counter performance (article 1271 first alignment of the Civil Code).

According to the principle of the *relativity of the effects of contract* (*res inter alios acta*), „contract produces effects only between the parties if the law does not state otherwise”. Thus, the power of contract pertains *only to the contracting parties* (article 1280 Civil Code). In this manner, contract cannot *profit or damage* the interest of other people (article 1270 first alignment of the Civil Code). There are *exceptions from the principle of relativity* of the effects of contract, such as: the promise of someone else’s deed or the stipulation for another party.

1.3. The rescind of the civil contract.

Contract is rescinded „under the conditions stated by law, based on the agreement of wills of the parties, as a result of unilateral rescind, expiration of the term, the fulfilment or non-fulfilment of its conditions, impossibility of execution, as well as any other causes stated by law” (article 1321 Civil Code).

The right to unilaterally rescind the contract acknowledged to one of the parties can be exercised “as long as the execution of the contract did not begin” (article 1276 of the Civil Code). As an exception, “in case of contracts with successive or continuous execution, this right can be exercised with the respect of conditions stated by law and a reasonable term of notice, even after the execution of the contract has begun; however, the rescind of contract only causes effects in regard to performances which are in the course of execution or have already been executed. If there was a counter performance mandatory in exchange for the rescind of contract, it only causes effects when the performance is executed and, if the performance is stipulated in exchange for the rescind of contract, it only causes effects when the performance is executed” (article 1276 third alignment of the Civil Code)¹. In case of the contract concluded for an undetermined duration, it can be unilaterally rescinded by any of the parties by providing a reasonable term of notice (article 1277 Civil Code).

Upon the rescind of contract, the parties are *free of any undertaken obligations*. However, the parties can be held (even after the contract is concluded) to repair the damage caused to the other party or even the restitution by equivalent of the performances received because of the conclusion of the contract (article 1322 Civil Code).

According to article 1549 first alignment of the Civil Code, in case of *the culpable non execution of obligation* by the debtor, the contractual creditor has a right of choice, as he can choose between: demanding the forced execution of obligations or the rescind of contract with damages to the extent in which a prejudice was caused.

2. The consumer contract: a variety of the civil contract.

Given the new social current of consumerism, consumer law became an ensemble of rules which governs the legal relations between professionals (suppliers of goods and services) and consumers (the weak and disadvantaged part of the relation). The main legal tool in this matter is the consumer contract.

The new legal institution has *advantages*, but also serious *disadvantages*. For example, the consumer can only know the information presented by the supplier, which makes loyal conduct an extremely important aspect in this matter (Calais-Auloy, Temple, & Depince, 2020, p. 59). Similarly, in the case of product sale, consent entails *only the essential elements*: the sold good and the paid price. (Calais-Auloy, Temple, & Depince, 2020, p. 127).

Given the specifics of this new legal institution, doctrine asks two questions. Is “the consumer contract” a civil legal operation or a new concept? Is the consumer contract a variety of the contract regulated by the Civil Code or are we in the presence of a new general theory of contract? The difficulty in answering these questions derives from the multidisciplinary character of consumer law: civil, criminal, administrative. (Calais-Auloy, Temple, Depince, 2020, p. 18).

2.1. Consumer contract: “an ambiguous civil concept” or a special contract?

From the doctrine’s point of view, consumer contract is a subject of controversy in speciality literature, especially given its *legal nature*. Thus, the following question was asked: Is the consumer contract *a legal operation* as is contract in civil law or is it *a new concept*?

A first interpretation sees the consumer contract as a legal institution, an objective legal tool and not an agreement of wills in the sense of civil law (Vasilescu, 2006, p. 47). Consumer contract cannot have its own legal nature in the sense of private law, as it is a legal instrument which regulates consumer law relations, without considering the specific legal content of the economic relation of consumption. It is not a legal act, but a “legal judicial regime” which applies to specific commercial relations (sale, lend, borrow).

In this context, consent and legal will of the parties *are irrelevant for the consumer regime* as the parties do not express consent for this extraordinary law, they must merely be subjected to consumer law. (Vasilescu, 2006, p. 50). Therefore, consumer contract was designed as a legal institution which is completely independent from the will of the subjects to which it is addressed. Thus, consumer contract is merely a “a legal armour which will be enforced *ope legis* to a specific contract”.

Consumer contract is merely *a legal tool of submitting* legal operations (specific and concluded) to a certain type of legal regime. As it is not a legal operation, consumer contract can’t be seen as a special contract. As “an objective legal institution”, consumer contract does not require consent in the sense of accepting the rules which define it and, therefore, consumer contract can’ have its own legal nature, but merely a legislative content by objectively describing an institution enforceable to special subjects, determined by enforcing the letter of the law.

As a conclusion, according to the above-mentioned statement, “consumer contract” is completely different from the “classic” type of contract, which is a source of obligations, as it formed of two distinctive contracts: a primary contract (a sale contract or a lending contract) and “the consumer contract”. For example, “in case of sale (consumer), it will be subjected to the special regime of the sale contract, but the parties will be held to respect the imperative regulations of consumer law” (Vasilescu, 2006, p. 47).

According to French doctrine, the details pertaining to the parties’ obligations are established by legal provisions or by “additional acts of will” (see Flour, Aubert, Savaux, 2006, p. 127). For example, „in case of sale (consumer), it will be subjected to the special regime of contract of sale, but the parties of sale will be held to respect the imperative regulations of consumer law”.

In a different opinion (Stănciulescu, 2017, p. 108), it was claimed that in order to identify the legal nature of consumer contract, we must start from the provisions of article 1177 Civil Code, according to which “the contract concluded with consumers is subject to special provisions and, in addition, to the provisions of the present code” (pertaining to contract). Given this provision, in the concept of the 2009 Civil Code, “consumer contract” is

essentially the result of a manifestation of will (affected by a special legal regime, Vasii, 2022, p. 30). Similarly, French doctrine sees consumer contract as a civil contract (Sauphanor-Brouillaud, 2012, p. 7; Piedelièvre, 2008, p. 37).

The parties of the consumer contract are the professional and the consumer. The *professional* (supplier) is the person authorized for this professional activity which manufactures, imports, stores, transports or markets products or parts of products or supplies services. A *consumer* can be any person or group of people who act outside their commercial, industrial or manufacturing activity.

On the other hand, *we can't discuss a new general theory* as the phrase “consumer contract’ can’t mean a general concept, but a self-standing institution for two reasons: before special contracts, there are no general contracts, but merely a general theory of contract and consumer law usually employs “classical contractual institutions” such as: sale, lending.

In conclusion, consumer contract can only be found under the form of a special contract: sale, borrow, lend (Stănciulescu, 2017, p.109), in which the parties are the professional and the consumer, subjected to special provisions in this matter.

2.2. The principles of consumer contract

In a contractual matter, consumer law is especially manifested in three directions: contractual freedom, equality of contracting wills and contractual fraternity (as principles of consumer contract).

The principle of restricted freedom to enter a contract and unlimited freedom to rescind the contract

Consequently, one’s freedom to engage in the formation of a contract left room for *contractual safety*, and, in the execution of contract, the freedom to *rescind the contractual relation*. The principle of contractual freedom means restricted freedom when concluding the contract, but also unlimited freedom to *rescind the formation* of the contract and *exit* the contractual relation. The principle of contractual freedom *has evolved* as there is less freedom to enter contractual relations but more freedom to interrupt the formation of the contract or to exit contractual relations, the sole remedy for contractual inequality.

The principle of equality of contractual wills: a “searched” (and not presumed) equality

In the present consumerist contractual relations, equality is an “essential tool of commutative justice.” Understood in such a manner, equality between co-contractors is no longer presumed, but searched for. The need for contractual equality is mandatory as “minimal contractual equilibrium’. Therefore, consumer law states the principle according to which the parties are not, at first, on equal legal positions – a principle based on a contractual reality, according to which the consumer is an anonymous, isolated, meaningless, attacked and interested co-contractor.

The principle of contractual fraternity (affectio contractus)

First, this principle considers the recommendation of *collaboration between parties*, especially in the formation of contract. Thus, common law results in *ius fraternitatis* (an *affectio contractus*). The principle of contractual fraternity proves to be more humane and richer in content as it entails what is negotiated and not what is imposed. Thus, renewal of the general theory of obligation by consumer law is based on a controlled and desired freedom.

2. 3. Institutions specific to consumer contract

Given the general rules, consumer contract is particularized by “precontractual obligations,” contractual balance *versus* abusive clauses and the consumer’s right to relinquish the contract.

2.3.1. „Precontractual” obligations or validity conditions?

During the formation of the contract, the professional has three “obligations” (which must be included in the content of the offer). Given the obligation to *provide information*, the professional must present to the consumer the essential aspects of the contract, such as: his identity and address, the essential characteristics of the product and the service, the price or the fee, delivery expenses, means of payment, the right to unilaterally rescind the contract and so on. The obligation to provide information *continues throughout the execution of the contract*. During this stage, the consumer must have information regarding the right to unilaterally rescind the contract, information regarding the headquarters and other elements of identification of the professional, the post-sale service and the warranty the professional offers.

The obligation to *provide advice* is a variety of the obligation to provide information and represents the need to provide all data pertaining to the contract which is about to be concluded. Thus, sometimes the consumer requires not only information, but also some advice, an opinion from an informed professional (Goicovici, 2022, p. 113).

The obligation of security protects the consumer against the risk of acquiring a product or a service which might cause *prejudice to his life, health or security* (article 27 letter a of the Consumer Code). Thus, it is forbidden to import, manufacture, distribute or sell forged or falsified products, dangerous products or products which might affect the health, life or security of consumers (article 9 Consumer Code). The obligation of security is continuous and, therefore, it operates during the formation of the contract and throughout the execution of the contract (Gheorghe, Spasici, & Arjoca, 2012, p. 73).

2.3.2. Presumed abusive clauses.

By the effect of law, the contract *presumes an equilibrium* between the obligations undertaken by the parties. As an exception, contractual obligation can be unbalanced (“abusive” clauses). In exchange, in consumer contracts, abusive clauses are *presumed* given the unbalance between the parties (Picod & Picod, 2021, p. 243).

The abusive clauses are the ones which were not negotiated directly with the consumer if, by itself or in relation to other provisions of the contract, it creates an unbalance which disadvantages the consumer, is contrary to the demands of good practice and is a significant unbalance between the rights and obligations of the parties (article 4 first alignment of law). To be acknowledged as abusive, the provision must meet three conditions:

The provision *was not negotiated directly with the consumer*.

According to article 4 second alignment of Law no 193/2000 regarding the abusive provisions in contracts concluded between professionals and consumers “a contractual provision will be considered as not having been negotiated with the consumer if it was regulated without providing the consumer with the possibility to influence its nature, such as standard pre drafted contracts or the generale sale conditions of professionals of certain products or services”

The provision *violates the demand of good faith*.

The principle of good faith is legally acknowledged by article 14 of the Civil Code according to which any person or company must exercise his rights and execute his civil obligations with “good faith” (in agreement with public order and morals).

There is a *significant unbalance* between the rights and obligations of the parties. “This is owed to the fact that law in the matter of protecting consumers is built on the idea that a) consumers, are the weaker part in relation to professionals, given the information asymmetry and b) their market behaviour can be affected by information” (Junuzovic, 2018, p.70).

Acknowledging abusive clauses can be made personally (by the consumer or by the professional) or through the responsible institutions (article 6 of Law no 193/2000). *Proof* of abusive clauses is made according to common law. According to article 249 of the Civil Code

“the person who makes a claim during trial must be able to prove that claim”. *The sanction* is annulment of the contract.

2.3.3. Formation of the contract. The consumer’s right to “withdraw” from the contract.

Given its specifics, consumer law changed the classical conception of offer and acceptance (Spasici, 2023, p.40). The novelty element is a period of transition between offer and acceptance, which is the basis of the “progressive formation” of the consumer’s consent.

In the phase of conclusion of the contract, during the first stage, consumer’s consent is *only temporary*; it will “*mature*” within the withdrawal term and the contract will strengthen (until it becomes definitive). Through the provision of articles 9-16 of Government’s Emergency Ordinance no 34/2014 (changed by Government’s Emergency Ordinance no 58/2022) the consumer is entitled to withdraw from the contract within a certain term. Generally, the term is 14 days to withdraw from a contract “without the need to justify the decision to withdraw and without additional cost” (or 30 days). As an *effect of* withdrawal of consent, the parties have (mainly) the following obligations: *the professional* must return all fees received as payment from the consumer no later than 14 days from the time he is informed of the consumer's decision to withdraw from the contract (article 13 first alignment of the Ordinance); *the consumer* must return the goods (or hand them over to the professional or a person so authorized by the professional) without unjustified delay and within a term of maximum 14 days from the time he communicated his decision to withdraw from the contract.

3. The reconsideration of the concept of contract. Current tendencies

Within the matter of contract, the following questions are presently asked: is the 1804 institution of contract (the Napoleon Civil Code) in crisis? Or “the growth crisis of the civil contract is also an identity crisis”? In this context, contract can become “an agreement of wills acknowledged in an *authoritarian manner* by the law or the judge and subjected to the law of contracts”.

According to the above-mentioned definition “contract suffers a *growth crisis* which determines the use of this notion for some public and private law legal mechanisms, but also in areas which can hardly be aligned with the internal logic of a civil, voluntary contract”. Thus, the judge or the law should clarify a certain state of law as a contract based on exterior criteria (Spasici, 2023, p. 41). The identity crisis of the contract which evolved from “the exacerbation of the principle of the autonomy of will ... to a solidarist vision of the contract” (Neculaescu, 2016) can be revealed in three stages and would be justified by the fact that the identification elements of the contract does not match a unique source which is the will of the parties. Thus “not everything that is legally found in a contract is obligational, just as not all that is regulated in a contract is consensual” (Vasilescu, 2006, p. 2). Thus, we will have to extract a general theory of consent from the common law of contracts, which applies to contracts and is based on Common Law and not *on a law of contracts*. (Belu Magdo, 2021, p. 37).

According to French doctrine (Jamin & Mazeaud, 2003, p. 214), the process of reconsideration of contract occurs in *five directions*.

Vitality, but also stagnation. Thus, development of individual initiative gives room for new contracts to appear, whereas classical contracts often become standardized and repetitive.

Growing sociology, with an accent on the quality of contract. If, in 1804, commercial contract law was opposed to civil contracts (given the specifics of commercial activity), nowadays another notion is actual, that of “professional” (for example, transporter, medic, notary, constructor and so on) with specific obligations and “consumer” with specific rights, such as the right to be informed, to be advised or the obligation to provide security.

Progressive lawfulness. If, in 1804, the judge did not play an active role in a contract (as its role was limited to ordering the execution of the contract or acknowledge it is viced) nowadays, the judge (or the arbiter) can often mitigate, moderate (or even call to negotiation) or even rebalance the contractual obligation.

Influence of European law. A wide range of directive and regulations have effects on contractual practice (in banking, insurance, financial tools, consumer protection, competition and so on).

Influence of international commerce. The modernization of business relation and its consequences, the uniformization of the right of international contracts influences internal contracts. Thus, contract law slowly evolved in relation to the law of goods, tort and especially people and families. (Stănciulescu, 2017, p. 37).

4. Conclusions

Consumer law appeared in the 1960' as a legal public order reaction determined by a new situation: the existence of an unbalance between the strong position of the professional and the weak position of the consumer. The legal tool in this domain is the consumer contract, *an institution of controversy in doctrine*, given its contractual nature and its relation to civil common law, which is seen as problematic, mainly because of its specific elements, such as: "precontractual obligations", "unilateral rescind" or "presumed abusive clauses" (which are somewhat difficult to harmonize with the classical ones). In French doctrine, this dispute is included in "L'emprise du droit de la consommation sur le droit commun des contrats."

Regarding the legal nature of the "consumer contract", we note the provisions of article 1177 of the Civil Code, according to which "the contract concluded with the consumers is subject to special laws and, in addition, the provisions of the present code" (common law in the matter of contract). Thus, in the concept of the 2009 Civil Code, "consumer contract" is in fact *a contract – the result of the manifestation of will*. In this context, we believe that the phrase "consumer contract" *does not signify a new general concept*, an independent concept for at least two reasons: before special contracts, there are nor general contracts (but only a general theory of contract); consumer law usually uses the rule "classical contractual institutions" such as: sale, lend and so on. Similarly, we must keep in mind that consumer law arose to regulate special civil contracts (when they are concluded between professionals and consumers). Consequently, consumer contract is in fact subjected to the general rules of contracts as regulated by the Civil Code, as a *variety of the civil contract*.

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