

FREE LEGAL RIGHTS AND DENIAL (WITHDRAWAL) - LEGAL WAY TO ENSURE THE PROGRESSIVE FORMATION OF COMMERCIAL CONTRACTS

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Abstract in original language

In the Romanian law system "de lege lata" there are three broad areas in which the manifestation of will is not done *uno ictu* (suddenly), classic but gradually. This possibility is ensured by legal acts regulating the legal clauses, express and free of denial (withdrawal) of the original consent expressed in specific cases. In Romanian law, areas in which the gradual setting up this particular way of consent concerns: distance contracts covered by the Ordinance. no. 130/2000, the contracts concluded away from business premises, covered by OG 106/1999 and the time-sharing contracts governed by Law 282/2004. This feature of the progressive training of consent is driven by the need to protect consumers in the context of aggression and peculiarities in which the respective legal processes. Legal provisions are transposing into Romanian evident Community regulations. This feature of the progressive training of consent is driven by the need to protect consumers in the context of aggression, and peculiarities in which the legal contract processes are made.

Key words in original language

Commercial contracts; Law; The protection of consumers.

1. GENERAL CONSIDERATIONS

Romanian legislature, transposing EU legislation into national law, to protect consumers, has adopted the last time, new laws that allow buyers to deny unilaterally and free, in a certain period expressly provided by law, the initially expressed consent.

The areas where this right is currently covered are:

- distance contracts made under Ordinance no. 130/2000¹ on the legal regime of distance contracts;
- contracts outside common areas, according to OG nr.106/1999² on contracts concluded away from business premises; and

¹ Ordinance no. 130/2000 on the legal regime of distance contracts, was published in the Official Gazette of Romania, Part I no. 431 of 09.02.2000

- Time-sharing type contracts governed by the Law no. 282/2004 on the protection of purchasers in respect of certain aspects of contracts bearing on the acquisition of a right of use of timeshare property³.

The legal right of unilateral denial means the possibility of unilateral withdrawal of the offer, in cases expressly covered by law, within 7-10 days freely and without reasons for this attitude and without any repercussion.

Because the legal right of denial governed by those three laws from above have features, below we show how to realize this right of legislation in each hand.

2. DISTANCE CONTRACTS

In these contracts, taking account the specific mode of reaching the agreement volitional which can lead often in bulk of mismatches in the agreement volitional, the legislature held the possibility of gradually manifestation of the address supply will, governing the law to withdraw the distance contracts within 10 days without penalty and without giving any reason.

The period of 10 days, provided for enforcement of the right of withdrawal of the contract begins:

- For products, of their receipt by the consumer if they have fulfilled the provisions of art. 4 of the Act;
- For services, the day of the conclusion or after the conclusion, the day the obligations of Article 4 have been met provided that not exceed 90 days.

When exercising the right of cancellation by the consumer the trader is obliged to reimburse the amounts paid by the consumer free of charge from the repayment amounts. Such reimbursement will be made within 30 days from the denunciation of the contract by the consumer.

3. CONTRACTS CONCLUDED AWAY FROM BUSINESS PREMISES

As well in these contracts the legislature stipulated the consumer possibility to cancel the contract within 7 working days

² Ordinance 106/1999 on contracts concluded away from business premises, republished in the Official Gazette of Romania, Part I no. 168 of 05.03.2008

³ Law 282/2004 on the protection of purchasers in respect of certain aspects of contracts bearing on the acquisition of a right of use of timeshare property, published in the Official Gazette of Romania, Part I no. 580 of 30.06.2004

The period of 7 working days begins:

- From the conclusion of the contract if it is concomitant with the delivery date;
- From the date of the conclusion of the service;
- From the product receipt by the consumer, if the delivery was made after the conclusion.

To exercise the right of withdrawal the consumer shall inform the dealer in writing by registered letter with acknowledgment of receipt its shipment date must fall within the period specified in the contract.

Advertising the dealer exempt the consumer from any obligation with the acceptance that the consumer has to return the products delivered.

If the trader fails to inform the consumer of the right of denial or if the information was incomplete or incorrect so that would not allow the exercise of such a right, the period of 7 days shall be extended by 60 days.

4. TIME-SHARING CONTRACTS

In the time-sharing contracts the purchaser of such a right can also cancel the contract without invoking any reason within 10 days from the date of signing by both contracting parties or from the date on which the parties have signed a pre-contract, as appropriate.

If the contract or pre-contract does not contain the information required by the law when signed by the both parties, the purchaser is entitled to request cancellation of the contract, respectively the pre-contract, within three months from that time.

If during those three months are provided this information the period in which the purchaser may cancel the contract begins on the date the information was communicated last.

If at the end of the period of three months the purchaser has not exercised its right to request cancellation of the contract and the contract does not include information required by the law, the deadline for cancellation starts from the day following the day on which that period expired.

5. CONCLUSIONS

From the technical analysis of the legal denial right (withdrawal, unilateral withdrawal) of the consent results, that it is recognized by law only to the consumer, not to the other party.

It is exercised free of charge and at least in appearance seems to change the basis of consensus and binding force of contract.

The volitional agreement is no longer made suddenly, but gradually.

The consumers consent although it meets, in a first phase, that of the professional, contract is not “fully” formed, but only in a provisional way.

The completion of the volitional agreement is gradually and it is strengthened with each second flow of the 7 or 10 days if the consumer does not exercise its right of withdrawal.

In all these cases the original consent of the consumer is insufficient to complete the formation of the Convention.

Presuming the failure of the assessment factors and reflection process from the beginning of meeting the offer with the acceptance, the legislature has determined that the will of the consumer to engage in such contractual relationships must assert itself progressively during the interval of 7-10 days allocated before the consumer’s consent to take the final one.

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