

IS CONSUMER PROTECTION ON THE CREDIT MARKET A KIND OF CINDERELLA IN ROMANIA?

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Abstract

What are the features of the consumer credit evolution? In Romania, consumer credit has evolved very fast after the year 2000. Its evolution was dichotomous in comparison with the other types of crediting. The National Bank of Romania (NBR) started taking steps to slow down credit augmentation, in response to the banks' expansive credit policies. Illo tempore, the banks' behaviour proved disloyal to the consumers in a number of ways – credit offerers used misleading publicity, increased interests, multiplied and raised their commissions, by using non-transparent methods or including some abusive clauses in the credit contracts. The legal and institutional remedies offered are far from the level of consumers' expectations, especially in times of crisis.

Key words: consumer law, consumer credit, consumer protection, contracted credits, unfair clauses.

Obviously in order to answer the question above we must first establish certain diachronic landmarks, as well as a number of reference points in connection with the very content of the question. These reference points regard the system of consumer law in Romania. From this entire system we shall focus chiefly on the consumer credit and the loan on mortgage. This legal system has been constituted by the adoption of some specific legal provision aimed at consumer protection since December 1990. Chronologically the system has developed as a legislative *crescendo*, with a multiplication of the domains that have been regulated and improvements of the initial regulations in various fields.

The premise from which we shall start is that the Romanian consumer law system is a contemporary creation. It is the result of transposing the European Community's *acquis* into the Romanian national legislation. (R.D Apan, 2008). The integrating law for this field is the Consumer Code Act no. 296 of 2004 that has been in force since January 2007. The above-mentioned Code provides the consumers' rights upon entering into contracts and the principles that govern each of the fields for which consumer protection is provided. The list of these fields includes, among others, financial services.

According to the Romanian Consumer Code the National Authority for Consumer Protection (NACP) is assigned to act as public central authority, through its local consumer protection agencies. The Code also provides the legal conditions required for the establishment of non-governmental consumer protection organizations. Also, through the sectorial regulations, the Consumer Code was completed with provisions for the following domains: advertising, client information, unfair clauses, door-to-door seals, distant contracts related to financial services, consumer credit and loan on mortgage, packages of tourism services, time sharing, warranties, general goods safety, responsibility for the defective goods and unfair commercial practices. (R.D Apan, 2007).

In Romania, consumer credit has evolved very fast; its evolution was dichotomous in comparison with the other types of crediting. In fact, the years 2003-2005 were defined as the *period of glory of the consumer credit*. Of all the credits contracted by the Romanian population, consumer credits amount to 80%. The orientation of more and more banks towards the retail segment is a reality. The credit structure is even more dangerous than the dynamics. The people's wealth is negatively affected, because the value of consumer goods purchased by credit is diminished.

What are the features of the consumer credit evolution? Tens of years of scarcity of

goods have generated in the Romanian consumers a real *hunger for credits* and therefore for consumption. Their needs included consumer goods bought directly from the shops based on credits.

Economically the Romanian banks had had a difficult time until the 2000's. Then, although in the eyes of the Romanian consumers they looked like inexpugnable castles, *the banks descended into the street*. They opened agencies at each street corner so that they became easily accessible and were able to offer credits easily. They understood the potentiality of the Romanian consumers who were "hungry" for credits.

The expansion of the banking system and the appearance of other credit offerers on the Romanian market acquired continuity; it grew into a real explosion of various, inciting, false and sweetened offers. The first advertisements of consumer credits were welcomed by the population with amazement and doubt. Best known was the publicity slogan offering "*credits based only on your I.D.*", that was subsequently banned by the National Council of the Audio-Visual (NAC).

The targets of such publicity and implicitly the targets of the banks' offers were the naïve Romanian consumers, who were eager to get loans – a real *Terra Promesa*. Any negotiation or analysis by the consumers of the loan conditions they entered into was either frail or completely absent. People letting themselves in this way completely at the hand of credit offerers, the effects of such credits became pernicious for the consumers. But not only the consumers! Unaware of the risk of not receiving the lent moneys back, the credit offerers in their turn relaxed the crediting conditions, and today they have to suffer the consequences of their ignorance.

Since it had to cope with the banks' expansive credit policies, the National Bank of Romania (NBR) starting taking steps to slow down credit augmentation, especially consumer credit, in the year 2003. Diachronically, the first measures taken by NBR were aimed only at the consumer credit. These measures were taken before the appearance of the express legal provisions on consumer credit. But in consideration of the facts presented above, the consumer protection regulations were incontournable.

The Consumer Credit Contracts Legal Conditions Act no. 289 was adopted in 2004 and entered into force in January 2005, published in M.Of. 611 from 6.07.2004, and was subsequently altered and completed. This Act regulates a series of legal means for the assurance of consumer protection. (R.D. Apan, 2004)

The Annual Effective Interest (DAE in Romanian) was also regulated by the law. This interest will have to be mentioned in any advertisement, together with any relevant credit information and offer figure. The credit offerers' obligations are chiefly to keep the consumer informed and provide counselling. A written contract must be drawn between the parties. The consumers' right to refund the credit in advance is also regulated by this Act, but in this case a commission shall also be paid. There are qualifying institutions – NACP and BNR – assigned to supervise and check any activity of the creditors and credit intermediaries related to the consumer credit.

The loan on mortgage was regulated through Law no. 190 of 1999, whose provisions entered into force in January 2000. This one had a slower evolution than the consumer credit. Only in the past two years, this field had a more rapid development. The Association of Romanian Banks (ARB) set up the Romanian Office for Credit (ROC), which became operational in 2004. ROC operates as an agency that monitors the credit users/natural persons for all categories of credits granted to such persons.

NBR continued to take measures in order to slow down the credit development and the credit in foreign currencies throughout the period 2005 -2008. The number of credit applicants was limited in the year 2005, by establishing the consumer's debt threshold at 35% of the net income of the applicant and applicant's family. Also, in 2005, in order to redirect the consumer credits from foreign currencies to Romanian lei, NRB reduced the obligatory minimum reserve rate for the credits in lei from 18% to 16% of the consumer credits for 2 years. (R.D. Apan, 2007).

In the second half of the year 2006 the NRB standards provided the limitation of the monthly installment at 35% of the consumer's income for the loans on mortgage and 30% for the consumer credits. The credit based only on the I.D. was replaced by the credit granted based on an income certificate. To support the same

policy of slowing down credit augmentation, in 2008 NRB set forth the analysis of the consumers' capacity of paying back their debts based on a level of income that was considered eligible. This level is calculated after deduction of certain expense, such as living expense. The eligible income can not exceed 20% of a person's income during the previous year. And to find out what this income is, here we get to the *Credit only based on financial records*.

From October 2007 to August 2008 NRB increased the monetary policy interest rate 7 times, until it reached 3.25 per cent. Throughout the period we are investigating, the behaviour of credit offerers was based chiefly on the Romanian consumers' lack of experience. In various situations this behaviour proved disloyal to the consumers in a number of ways – credit offerers used misleading publicity, increased interests, multiplied and raised their commissions, by using non-transparent methods or including some abusive clauses in the credit contracts.

Disloyalty versus remedy!

Three categories of remedies were used with a view to re-establishing the Romanian consumers' protection:

- 1.The National Council of the Audio-Visual interdicted certain credit advertisements;
- 2.The consumers themselves submitted complaints to NACP for various infringements of their rights that were provided in the credit contracts;
- 3.The consumers and NACP denounced to Courts the abusive clauses provided in certain credit contracts;

The legal ground for the sanctions and interdictions against any misleading publicity was the Publicity Act no. 148 of 26 July 2000 (R.D. Apan, 2007)The interdiction of any misleading publicity includes the situations when credit offerers do not communicating any costs and DAE, and writing such relevant information in tiny letters.

What did the Romanian consumers complain against at NACP? Unjustified registrations in the Registry of Commerce, providing inaccurate or incomplete pre-contractual information about the loan conditions, increased interests, bank commissions that had not been notified or were not justified, introduction of commissions not provided in the contract, anticipated repayment not operated in the accounts, unfair contractual clauses, anticipated repayment of the credit in conditions that are very onerous for the consumers.

On 14 August 2008 mass media announced that NACP had declared war to the banks! *The war* was caused by the approximately 1,300 complaints received from the consumers in the first half of the year 2008. Of these approximately 60% were well-grounded. NACP carried out inspections in 20 banking institutions, of which 14 were sanctioned. Couldn't this war have been started sooner? On 13 October 2008 ANPC finished the project for the alteration of the laws that regulate the consumer protection in connection with the credit relations. This project was submitted to the Romanian Government and, if it is adopted, will enter into force in January 2009.

The project provides that the institution that offers credits must supply the consumer with extended information before the conclusion of the contract; also that the consumer must be presented a cost simulation and one copy of the contract. The banks' obligation of not increasing their commissions throughout the development of the credit contract is provided in this project as well. Also it is interdicted that banks introduce new taxes, tariffs or commissions that are not provided in the original contract.

The variation of the interest rate shall be established based on the verifiable reference indices provided in the credit contract. Any proposition for alteration of the credit contract provisions shall be communicated to the consumer in advance. Should the consumer not agree to the alteration proposed by the bank, the consumer is entitled to terminate the contract and to have the credit contract refinanced by another crediting institution, without payment of any commission for the anticipated repayment of the debt.

The above-mentioned regulation adopts some of the lines of action provided by the New Directive on Consumer Credit that was passed in 2008 and which will be transposed in Romania. It is obvious that, if this version of the project is passed, the future law will offer the consumers higher protection. But after it is adopted and enters into force, this regulation will be applied only to *future* contracts. The credit contracts that will have already been concluded by the date when the law enters into force will be still governed by the current regulations. NACP also proposes that a Code of Good Practice be instituted for the banking domain.

The unfair clauses are regulated by Law no. 193 of 2000, which has been in force since 2000, with amendments and completions. The criterion according to which a clause is considered unfair is the creation of a significant unbalance between the rights and the obligations of the parties to the detriment of the consumer. Another criterion is the lack or the insufficiency of any direct negotiation with the consumer of the respective clause.

Law no. 193 of 2000 regulates the legal procedure for declaring a contractual clause unfair. The consumer communicates such clause to NACP, which draws up a report and sends it to the Court. Only the Court is competent to declare if a certain contractual clause is an abuse or not. (R.D. Apan, 2007).

According to this procedure the Romanian courts have been assigned to judge such cases. What clauses in the credit contract can be unfair? There are cases when a Court of law declares certain clauses in the credit contracts are unfair. The specialized body, established at a national level, that provides the institutional framework for fighting against unfair clauses is the Commission for Unfair Clauses. This Commission has the legal statute of a nonprofit, independent consultative body. However, its current activity is neither transparent nor efficient.

The Romanian consumers have very high expectations as regard the protection provided in the credit contracts, but the legal and institutional remedies offered are far from the level to such expectations, especially in times of crisis like these!

Disloyalty versus crisis! Some of the Romanian banks reacted to the crisis of the international financial and banking system. Their behaviour became even more disloyal to their clients, they increased the interests, and their commissions were also raised in order to cover the eventual loss. As the crisis became deeper in the last two months the banks have increased the interests for the loans in both euro and lei by two percent. This did not apply only to the new credits, but also to the credits that were being repaid by the clients.

The Romanian consumers' reaction increased. On 24 October 2008 the ANPC representative declared that he had received from the consumers 200 complaints in connection with various credits only in the last 2 days. This happened because 9 banks had increased the interests using as a pretext the international crisis. The effects of the crisis were also felt by the Romanian consumers whose credit files were being approved or have just been approved, but have not received their credits yet. By applying the recently established NBR norms, the Romanian consumers could receive smaller credit than the ones approved initially. The consumers, especially the ones who took loans on mortgage, could lose any advance payments they have effected. Also, they might lose the documentation analysis commission and the mortgaged estate assessment costs.

But, the enforcement of the NBR norms in October 2008 also had a pseudo-effect, it determined the Romanian consumers to make excessive credits during August and September. The payment of mortgages for the month of September 2008 is the biggest one this year. 400 thousand million euros, double than the previous month. To diminish the impact of the international crisis upon the Romanian market BNR took the following measures:

a. Limiting the interests to maximum 25% above the Lombard rate – 14.25%. This means that the maximum rate published by ROBOR depending on which the rates of certain credits are calculated can not exceed 17.8%.

b. On 30.10.2008 NBR decided to reduce the obligatory minimum reserve rate for the liabilities in lei of the credit offering institutions from 20% to 18% and kept the level of 40% for the liabilities in foreign currencies starting with the period 24 November to 23 December 2008. This was in order to improve the liquidity management on the inter-bank market and therefore the banks' possibility of granting credits in lei for a sustainable economic development.

c. the monetary policy interest was maintained for the second month at 10.25% per year.

Eccum modo, the consumer credit practices acquire the valences of the creditors' responsibility. The level of the credits for the population has reached in Romania 18% of the Gross National Income (GNI). The Romanian Credit Office announced that of the 4.8 million Romanians who took credits in the last 4 years, approximately two million have had at least one month delay in repaying their debts.

Conclusions: consider the following as priorities:

- completing the national system for the consumers' protection with regulations on the procedure against natural persons' overindebting. At a national level no specific procedure is applicable to a natural person or family that cannot face any more the exigible debts. Such a procedure is a necessity in the near future. (R.D.Apan, 2003).

- completing the national system for the consumers' protection with regulations regarding the special procedure for recovery of claimed amounts from the consumers. It is obvious that the banks, more than ever, will apply any legal enforcing procedures in order to recover the amounts they lent to the consumers. At the moment the applicable procedure for any creditors is provided by the Romanian Civil Procedure Code. Also, many debt recovery companies have been established and these operate without their activity being based on legal regulations.

There will be Romanian consumers who will not be able to repay their debts and these consumers are not protected in any way. In such cases, the very dignity of people could be affected. They could lose their homes, jobs and families. Only by providing certain specific procedures for such situations can the law protect them.

-establishing a consumers' association specializing in consumer protection in their crediting relations. The activity of this association should focus on educating and informing the consumers and providing them with consultancy, as essential elements of consumer protection. It would provide advice when the consumers make complaints addressed to the bank and if necessary it would represent the consumers before the court. The consumers' reactions in the next period were remarkable. At the moment the consumers address to various legal firms and have to pay for consultancy and legal assistance. Jurisprudence in this field is still developing. The effort of the consumers that will be represented by this association, together with the efforts of the competent institutions can increase the consumers' chances of acquiring a higher level of protection in their credit relations.

In this way the Romanian consumers' reactions will be unified and people will be represented and will be able to be involved in the construction of new regulatory frameworks for the credit market.Credit consumer protection is still far from satisfying the requirements of an increasing credit market in Romania.

So Cinderella is still among us!

References:

- 1.R.D. Apan, *Consumer Law in Romania – A Contemporary Creation*, Journal of Consumer and Commercial Law, 2008, p.17-22;
- 2.R.D. Apan, *Consumer Legal Protection; Consumer Credits and Other Related Domains*,2007,p.56-130;
- 3.R. D. APAN - *Reglementările comunitare în domeniul protecției consumatorilor în materia creditului destinat consumului* (I), Revista de Drept comercial nr. 10/2004, pp. 71-103;
- 4.R.D. APAN - *Reglementările comunitare în domeniul protecției consumatorilor în materia creditului destinat consumului* (II), Revista de Drept comercial nr. 1/2005, pp. 69-92;
- 5.R. D. APAN - *Reglementările comunitare în domeniul protecției consumatorilor în materia creditului destinat consumului* (III), Revista de Drept comercial nr. 2/2005,pp. 50-60;
- 6.R D. APAN - *Protecția consumatorilor aflați în situație de supraîndatorare*, Buletinul Științific al Universității Babeș Bolyai, 2003, pp.64-70.;