

L'INEFFICACITÉ DES CLAUSES VEXATOIRES DANS LE NOUVEAU CODE CIVIL ROUMAIN

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ABSTRACT: *The article focuses on the complexity of the contemporary diversification of the sanctions applicable to unfair clauses, in the context of the entering into force of the Romanian New Civil Code on October 1st, 2011, as well as on the persisting difficulties surrounding the distinction between the relative nullity of an unfair clause, the inexistence and the rescission, as potential remedies. The new regulation marks one step towards a timid convergence of the respective regimes of nullity and rescission, while in contracts concluded by consumers the judge remains able to eliminate unfair contractual terms as being “struck out” or “unwritten”. The duty of fair dealing appears as a generally applicable obligation, in the sense that the parties are subject to it from the start of the negotiations through the formation of the contract or even beyond it, through the performance of the contractual duties. Secondly, the texts of the New Civil Code forbid taking an excessive benefit from the contract when the other party is in a situation of weakness, emotional, informational or economic. We also insist on the sanction for the bad faith in Consumer Law, applicable in parallel to the new regulation of contracts, in hypotheses in which a professional party is in an advantageous contractual position resulting from the use of unfair contractual terms. The legal texts according to which a special duty of fairness is imposed on the “strong” party when consumers are not able, because of their position, their situation or their competence, to negotiate the contract or its terms, is also analysed in correlation with the repression of unfair terms by the New Civil Code, thus being enclosed the clauses which aim to create or result in the creation, to the detriment of the non-professional or the consumer, of a significant imbalance between the rights and obligations of the contractual parties.*

KEYWORDS : *unfair clauses, consumer, nullity, invalidity of contract, New Civil Code.*

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