Evolution of Trade Contract Law in the Modern and Contemporary Period

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Abstract

The discovery of America in the sixteenth century had great effects on the development of commercial activity as well as the regulations of commercial contracts in particular. Traders took full advantage of the gold and riches discovered and organized themselves into very powerful companies both economically and politically. A new period opens in the development of trade and the organization of political and economic power in nation states, with particularly significant consequences on the political, economic and legal level. The state power that was interested in trade, a source of wealth to ensure the legal certainty of trade regulated the establishment of fairs, on the basis of royal privileges granted, and tribunals composed of merchant judges elected to settle disputes between merchants. Being a primary study, the purpose of this study lies in the scientific and theoretical analysis of commercial contract law which has a rich historical evolution, significantly influencing trade relations (entrepreneurial).

Keywords*: the law of commercial contracts, the evolution of commercial contracts, the modern and contemporary period, the concept of commercial contracts, the features of the commercial contract.*

JEL Classification: K22

1. Introduction: the modern period

The conquest of Constantinople by the Turks marked the end of the Byzantine Empire and with it, the closure of trade roads connecting Europe to Asia. The Mediterranean, becomes a closed sea and unrelated to the great centers and riches of the Far East.

The great Italian cities: Genoa, Florence, Venice, etc., which had been enriched first by the Crusades and then by this trade, are beginning to decline. Spanish, Portuguese, Dutch traders discover new trade routes and important resources in the discovered territories.

The discovery of America in the sixteenth century had great effects on the development of commercial activity as well as the regulations of commercial contracts in particular.

Traders took full advantage of the gold and riches discovered and organized themselves into very powerful companies both economically and politically.

2. Discussion and materials

A new period opens in the development of trade and the organization of political and economic power in nation states, with particularly significant consequences on the political, economic and legal level.

1. *The formation of national States* by uniting or joining different cities and provinces and, as a result, forming a unitary right, including commercial, of each state. There is a nationalization of commercial law.

2. *Statutory law* (that achieved by statutes) and *consuetudinary law* (achieved by internal rules issued by consuls) are replaced by a written law, issued by the state authority. The norm of corporate law applicable in the territory of a city is changed to the written norm of the state political organization of an interlocking character or throughout the territory of the country. With the strengthening of monarchical power, the place of statutes and collections of Customs is taken by *Royal ordinances and edicts*.

The state power that was interested in trade, a source of wealth to ensure the legal certainty of trade regulated the establishment of fairs, on the basis of royal privileges granted, and tribunals composed of merchant judges elected to settle disputes between merchants. The first country to move from statute law and customary law to written commercial laws, applicable throughout the country, was France, by order of the King establishing commercial tribunals, headed by Parliament, as the Supreme Court.

By the ordinances of 1462 and 1464, King Louis Xl of France established four international fairs in Lyon, with exemption from entry and exit fees for goods and merchants.

An edict of 1463 established a commercial court called *Consulate* for the city of Montpellier. By the Edict of 1563, the work of Michel d'Hospital is created in the court of permanent commerce consular jurisdiction applicable only to merchants, having in its composition not only the territory of Paris, but also other French cities.

In 1565, by another edict, the king of France Charles IX circumscribed the competence of consular judges, which in order to be exercised were necessary two conditions: the merchant quality of the parties and the commercial quality of the matter subject to judgment[2].

In the same period, in Spain, the Royal Ordinance established the courts of Burgos 1484 and Bilbao in 1511, and in 1560 was adopted *The Bilbao Trade Regulation* which, in that it was later also applied in the other cities of Spain, can be considered as the first codified commercial right.

The most important, however, for the codification of commercial law (including commercial contracts) the work performed under King Louis XIV in France are:

a) *Colbert's Ordinance* from the year 1673 on the land trade, also called *Savary Code*, because it was mostly written by the merchant Savary, the author and a book - *Le parfait negociant*:

b) *Ordinance of 1681* on trade by sea, based on a sixteenth-century work *Guidon la Mer*.

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[2] П.П. Цитович. *Очерк основных понятий торгового права*. Москва: Центр ЮрИнфоР (P.P. Tsitovich. *Essay on the basic concepts of commercial law*. Moscow: Center YurInfoR), 2001, p. 52.

All these legislative monuments of the time contain regulations, quite successful, also regarding commercial contracts. The authors of these works considered that commercial contracts is precisely that foundation on which the activity that we call commercial activity is built.

3. Introduction: the contemporary period

The contemporary period, marked by the French Revolution of 1789 is characterized by:

a) *Proclamation of freedom of trade and industry*, by law of 2-17 March 1791, often referred to as, *Allarde Decree*, after its initiator, deputy Allarde. In the given legislative act it is stated that "any person shall be free to do that trade or to exercise that profession, art or trade, which he will find good, with the obligation to pay tax, to obtain, in advance, an authorization (Patent) and to comply with the police regulations".

b) *Suppression of corporations* and the prohibition to establish new ones by the Chapellier Act of June 14-17, 1791.

These laws had important consequences throughout Europe, as they created a regime of freedom and equality in trade and in the exercise of professions. The principles have been taken up and maintained in other European countries as well, with the Legislature ruling that freedom and the will to undertake are foundations of commercial life.

4. Discussion and materials

Of great importance, in the evolution of commercial contracts, had *French Commercial Code*, adopted in 1807, entered into force in 1808. Not taking into account the presence of structural gaps, due to the fact of reproduction in the code almost in total of the 2 ordinances of Colbert, which became morally obsolete, by this revolutionary codification, certain acts, special commercial contracts, acts and legal operations were removed from the French Civil Code (1804) and given a new legal form, corresponding to the requirements of production, Exchange and movement of goods.

After the adoption of the French Commercial Code (year 1807), the evolution of legislation in the field of commercial contracts in France followed the evolution of economic policy. Political revolution and industrial revolution, extension, the development of liberalism in England, Belgium, the Netherlands and other countries, the progress of industry and the restoration of protectionism, in some European states, have fully contributed to the development of trade, as well as to the changes in the Commercial Code through numerous laws and normative acts.

In this development can be distinguished *three great periods* which overlap, moreover, each new policy, adding to the old rules, own rules.[3]

1. *Liberal period*. By the end of the nineteenth century, trade legislation followed the directives of liberal economics. It is conducive to business and private initiative. It is during this period that the care is manifested to give traders the legal means of action in order to enjoy the freedom to contract and the freedom of trade maintained in the Commercial Code.

[3] Romul Petru Vonica. *Drept comercial, parte generală.* Bucharest: Lumina Lex, 2000, p. 46.

Thus, it is regulated: new property rights are recognized and protected: the right on patents, trademarks and designations of origin, designs and models, new means of credit are granted to traders, by organizing new guarantees: commercial pledge, and warrant in general stores, mortgage on ships and aircraft, hotel and oil warrant, pledge on automobile. New means of payment are regulated: check and credit cards.

The freedom of commercial contract allows, on the other hand, the establishment of new contracts, especially in banking matters: current account, transfer, etc.

2. *Regulatory period*. In the face of excesses of competition and abusive conduct in the dealings of traders with non-traders, the state ceases to be an impartial spectator in the economic struggle and intervenes either to prevent excesses or to protect the weakest. In particular: consumers, workers, craftsmen and small traders.

This evolution is materialized starting from the end of the nineteenth century in the imperative regulation of adhesion contracts, such as: employment contract, transport contract, insurance contract, commercial leases by more severe and complete regulation of commercial companies, by regulating professions, such as: the profession of banker and the profession of insurer, by prohibiting convicts and bankrupt from exercising commercial professions or running companies through the establishment of the Trade Register, repression of frauds and forgeries in sales, but also by a greater protection granted to companies in difficulty, because they represent an economic value and are synonymous with the exercise of a profession.

Period of directed economy. Economic crises, lack of goods on the market, unfair competition, as well as the existence of international conventions have led the state to intervene to direct private activities, in order to ensure a better production and distribution of goods, control of trade and foreign trade the regulation of banks and insurance, the organisation of professions, the setting of commodity prices, the sale of certain products and the regulation of certain sales processes. These measures are accompanied by the obligation to obtain administrative authorizations for the exercise of trade, the establishment of fiscal controls and the application of criminal or contravention sanctions. However, the free movement of goods, services, capital and persons is now the main feature of the unity and homogeneity of the European market

5. Results

No less important influence had and the adoption of *The German commercial code* in 1897, entered into force in 1900. The German commercial code enshrines the subjective system, that is, it is applicable only to persons who have the quality of a trader, and to non-traders, only when they enter into legal relations with traders and with regard to their trade.

The German commercial code is superior to the French Commercial Code, by its scientific attire, by its innovations and by a perfect adaptation to the needs of modern trade, without diminishing the merit of the primacy and clarity in expression of the French Commercial Code. Among the legal institutions that relate to commercial contracts, are regulated by the code: trade auxiliaries, insurance contract, Commission contract, maritime law, goods warehouse, etc.

The German legislature supplemented the Commercial Code with other laws, which refer to commercial contracts such as: the law on exchange in 1908, the insurance law in 1935, the bill of exchange and cheque law.

The German Commercial Code exerted a decisive influence on contemporary commercial contracts, especially in Austria, Hungary, Lichtenstein and Japan which almost verbatim reproduced the German law. Another moment that can be remembered in the history of codifications is that of the preparation and entry into force in *Switzerland*, in 1883, of the Federal Code of obligations, later incorporated in 1912 into the Swiss Civil Code, substantially amended, especially as regards commercial companies in 1937.

In Swiss law, the unification of civil obligations and commercial obligations into a single code was achieved, without the merger going beyond the scope of the general theory of commercial obligations and contracts. A second characteristic feature of Swiss Commercial Law is that *as the basis of the commercial law is the existence of an enterpriser*.

Regarding *England*, it does not have a commercial code that specifically regulates civil law legal relations born of Commerce. However, law and case law take into account particular commercial interests. In Old English law, the custom of merchants was received by ordinary courts and is part of *common law*.

Lord Mansfield, considered to have exercised decisive influence, in this regard declares in a famous decision that *the law of merchants and the law of the Kingdom make only one*.

Neither merchants nor acts of Commerce have a particular right. Commercial affairs are within the jurisdiction of the High Court of Justice and judged, following the custom revealed by commercial precedents. There is a commercial court, but this is only an administrative division which deals with some relations between traders assuming technical knowledge.

However, the English understand *that those rights and obligations arising from commercial transactions between traders* and represents namely *commercial law* (commercial law), which in fact is largely nothing more than a regulation in the sphere of commercial contracts.

To a large extent, the general part of the law of obligations and *commercial law* it is based on custom, but we also have special legislative acts (Acts), supplemented by jurisprudence, which regulate the sphere of commercial contracts such as: The Sale of Goods Act 1893; The merchant shipping Act 1894; The cheques Act 1957.

6. Conclusion

So, in the modern and contemporary era, the legislation of commercial contracts has evolved and correlated with the different stages of development of trade:[4]

1) *Pre-industrial stage*, in which the sale of products does not raise problems, since few goods were produced, which made the demand practically impossible to cover, prevailing the stage of shortage;

2) *Stage of production economy*, generated by the progress of machinism, which no longer produced on demand, but in series and in advance;

3) *Stage of consumer society*, which began in 1950 and is still in full development today; at this stage mass production is at its peak and society develops on the basis of a

[4] *Коммерческое (торговое) право*. под.ред. Ю.Е.Булатецкого, Москва: ИД ФБК-ПРЕСС (Commercial (trade) law. ed. Yu.E. Bulatetsky, Moscow: Publishing House FBK-PRESS), 2002, p. 31.

market economy, having as its principle free competition.

Trade is inextricably linked by interdisciplinarity to international investments based on treaties, meaning that the legal regime is complemented by international law[5].

We believe that the development of modern commercial law occurs through:

- special legislation on companies;
- influence of social legislation;
- protection of the national economy and credit;
- increasing state intervention in economic and social life;
- legislative reforms regarding the economic activity regarding commercial companies, the procedure of judicial reorganization and Bankruptcy the evolution of trade in a consumer society.

The purpose of this study is to analyze the scientific and theoretical analysis of the law of commercial contracts, which we identify as an independent branch of law, which has a rich historical evolution, significantly influencing trade relations (entrepreneurial).

Both the doctrine and the legislation of many countries identify different opinions about the nature, features, elements derived from the law of the commercial contract.

Being one of the primary studies under investigation, it was possible to include only some introductory elements of the evolution of commercial contract law, due to the finding of some important issues to be investigated separately.

Bibliography

1. П.П. Цитович. *Очерк основных понятий торгового права.* Москва: Центр ЮрИнфоР (P.P. Tsitovich. *Essay on the basic concepts of commercial law*. Moscow: Center YurInfoR), 2001.
2. Romul Petru Vonica. *Drept comercial, parte generală.* Bucharest: Lumina Lex, 2000.
3. *Коммерческое (торговое) право*. под.ред. Ю.Е.Булатецкого, Москва: ИД ФБК-ПРЕСС (Commercial (trade) law. ed. Yu.E. Bulatetsky, Moscow: Publishing House FBK-PRESS), 2002.
4. Cristina Elena Popa Tache, *Administrative Review and Reform Movements from the Perspective of International Investment Law*, in Julien Cazala, Velimir Zivkovic (editors), *Administrative Law and Public Administration in the Global Social System*, (*Contributions to the 3rd International Conference. Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective, October 9, 2020)*, ADJURIS – International Academic Publisher, Bucharest, 2020, pp. 212-217.

[5] Cristina Elena Popa Tache, *Administrative Review and Reform Movements from the Perspective of International Investment Law*, in Julien Cazala, Velimir Zivkovic (editors), *Administrative Law and Public Administration in the Global Social System*, (*Contributions to the 3rd International Conference. Contemporary Challenges in Administrative Law from an Interdisciplinary Perspective, October 9, 2020)*, ADJURIS – International Academic Publisher, Bucharest, 2020, pp. 212-217.