

THE EFFECTS OF THE PANDEMIC TIMES ON HUMAN RIGHTS AND BUSINESS ENVIRONMENT

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Abstract

Although some time has passed since the start of the pandemic, its consequences are still being felt, not only at the national level, but also at the EU level, and an immediate consequence is the beginning of a new global crisis. The devastating economic effects that Covid-19 had on human rights and contractual relationships have particularly affected the entire world, given that businesses experienced supply interruptions, and many contracts could no longer be executed or were executed improperly, indirectly being affected fundamental consumer right. The exact number and scope of companies that suffered losses leading to bankruptcy and permanent market exit is not clear, but according to a survey conducted by the World Bank's Enterprise Analysis Unit, different approaches have been developed to measure the virus's impact on the private sector and individuals. In this context, not only entrepreneurs suffered significant losses, but also consumers of products and services, who were automatically transferred for online purchase with risk of non-conformity and delays.

The aim of this paper is to discuss a series of progressive steps that must be followed after pandemic times for the protection of human rights and business enforcement with a detailed analysis on the importance of special internal regulation for the for overcoming situations of force majeure. Even though we are currently in a post-pandemic period where everything seems to have returned to normal, we still believe that the consequences of the pandemic are still being felt, as the pandemic has not disappeared, but we have learned to live with it.

Keywords: *force majeure; contractual relationships; business enforcement; human rights; consumer interest.*

JEL Classification: A11, D5, K10, K12.

1. INTRODUCTION

The importance of the justifiable impediment, as well as the impact it can have on contractual relations, has been addressed over time, both in the field of law and in judicial practice, noting the evolution and improvement of the legislation in the field regarding the correct application of the institution of the justifying impediment, being a new notion that was implemented in the Civil Code of the Republic of Moldova starting from March 1, 2019, found in art. 904 Civil Code of the Republic of Moldova (Law no. 133/2019). The content and features of the institution of justifying impediment are similar to those of force majeure, an article found in the old regulation, however there are subtleties and ambiguities that we propose to develop in the present article.

The research also aims to clarify what circumstances or events could be considered a justifying impediment in a civil contract and whether the Covid-19 pandemic could fall into this category, as well as the applicability of the legal provisions in the context of the measures taken by the authorities in relation to the events that occurred once the pandemic stopped the entire economic circuit. Following a comparative analysis of national legislation and practices, as well as various opinions and considerations from the academic world, the research reveals under what circumstances during the pandemic period it was possible to invoke Article 904 of the Civil Code of the Republic of Moldova and what its peculiarities are.

We consider that this administration of justice is far from perfect, given the fact that the human factor is low and that it plays a role in decision-making, in this way the hypothesis is also admitted in all parties, but even the actors of justice do not apply and do not correctly understand the present the institution, this article being a novelty for the Civil Code. Also, the Covid-19 pandemic was so unpredictable, and it spread so quickly that society, especially the contracting parties, also encountered great difficulties during this difficult period.

Regulating, interpreting, and correctly applying legislation during the Covid-19 pandemic is highly important for the entire economic circuit, considering that through the enforcement of this provision, parties strengthen their trust in justice, being ensured the safety that in certain situations beyond their control, such as a global epidemic, they could be exempt from fulfilling contractual obligations if they are acting in good faith and if, due to the pandemic, they are genuinely unable to perform the contract.

The topicality of the subject stems from the devastating economic effects that the Covid-19 pandemic had on contractual relations, being particularly affected by the world of business, given the fact that businesses experienced interruptions in supply, and many contracts could no longer be executed or were executed, but improperly. The exact extent and number of businesses that suffered losses leading to bankruptcy followed by permanent liquidation from the market is not an exact one, but according to a survey conducted by the World Bank's

Development Economics (DEC), Business Analysis Unit, different approaches have been developed to measure the impact of the virus on the private sector and it has been concluded that at least 2 percent have stopped operating permanently, the majority of businesses being in the service sector (World Bank, 2020). Although it initially seemed to have started as a health crisis, its effects were very quickly felt in the economic field worldwide, being particularly affected in the field of tourism and that of restaurants, given the fact that for a while all restaurants have been closed, only home delivery being possible, in this context it is certain that the people employed in this field suffered, who were left temporarily without a job, the state and the companies being unable to cover the entire salary of the employees, thus from here a social crisis arose. Thus, even if we are in a post-pandemic period, where it seems that everything has returned to their places, we still consider that the consequences of the pandemic are felt to this day, given the fact that the pandemic has not disappeared, only we - the people we learned to live with it.

The general purpose of the article is determined by the unpredictability and the manner, as well as the speed with which the Covid-19 pandemic spread and how the particularities of the legal regime of the institution of justifying impediment are applicable in this case.

2. LITERATURE REVIEW

In the period 2020-2023 the notion, causes and effects of the pandemic have been quite discussed and analysed, as the consequences of the pandemic are still felt today. However, could the pandemic that has taken hold of all mankind be an excuse for not fulfilling a contract?! And if so, what would be the rule governing such a situation?! This situation has been established in the private law systems of other jurisdictions as an impediment beyond the control of the contracting party, such as "force majeure" (The Civil Code of the French Republic, 1804) in French law, "frustration of contract" in Anglo-American law, "höhere Gewalt" or "Unmöglichkeit" (The Civil Code of the Federal Republic of Germany, 1896) in German law, "непреодолимая сила" in Russian law (Amarița, 2006), however, somehow summing up to the same general idea, but with its peculiarities.

Given that the notion of force majeure is well known in Moldovan literature and there are a lot of studies and analyses of it, there were also legislative proposals to improve Article 606 of the Civil Code of the Republic of Moldova, which regulates force majeure. But in the modernized wording of the Civil Code in force since 1 March 2019 the notion has been replaced by the one in Article 904, namely "justification due to an impediment". So we will rely more on its analysis and the new peculiarities.

The institution given in art. 904 para. (1) The Civil Code of the Republic of Moldova regulates that "the debtor's non-execution of the obligation is justified if

it is due to an impediment beyond the debtor's control and if the debtor could not reasonably be asked to avoid or overcome the impediment or its consequences".

Thus, considering the definition given by the Civil Code, we come to the idea that: for an event to be considered a justifying impediment, it must meet the following conditions:

- an event outside the debtor's control occurs,
- the debtor could not reasonably be required to avoid or overcome the impediment or its consequences;
- be exceptional.

The COVID-19 pandemic certainly corresponds to conditions one and two from the list presented above. At the same time, regarding its exceptionality and the possibilities to foresee its occurrence, the parties to a contract may have different opinions. Thus, the creditor can claim that in the last two decades there have been several global epidemics (atypical pneumonia, ebola, swine flu), which lack the exceptional character of the coronavirus. Moreover, entrepreneurial activity expressly assumes the existence of risk in this activity, but on the other hand the debtor can claim that the consequences of the coronavirus differ so significantly from those of previous pandemics that the current virus could not be predicted (Tarița, 2021). Thus, in our opinion, the Covid-19 pandemic could certainly be considered a justifying impediment, given its proportions and consequences.

3. DATA AND METHODOLOGY

Regarding the methodology used in the process of writing the scientific article, efforts were made to suggestively elucidate the essential aspects of the impact of the pandemic on contractual relations and the functionality of contracts in commercial practice, this aspect would facilitate the need to understand the respective issue. In this sense, the following methods were used:

- the comparative method, which helped to expose the differences in the legislation of the Republic of Moldova and the regulations during the pandemic at the national level, compared to that of other states, which also went through the consequences of the pandemic;
- the systemic method, in which the problem of applying contracts in practice during the pandemic period was highlighted and analyzed;
- the statistical method that was applied to be able to highlight the number of companies, but also the actual contracts that they had to lose as a result of the pandemic;
- the logical method helped us to clearly formulate the conclusions related to the investigated field, the ways of interpreting the legal norms and a complex study of the legal practice. Several electronically provided articles were also used in the study, as information relevant to the

pandemic period regarding force majeure was limited in books and journal articles.

This research also aims to analyse the impact that the pandemic has had on human rights, in particular how companies have assumed certain obligations to guarantee certain rights, both to consumers and to their own employees, who have found themselves facing forced unemployment.

The United Nations Guiding Principles (UNGPs) on Business and Human Rights do not explicitly mention specific rights, such as the right to health or the responsibility of companies in emergency or other crisis situations. However, as a whole, the UNDP clearly requires companies to: be diligent and assess the impact of their activities and behaviour on all rights, including the right to health. Companies must take all possible measures to mitigate potential harm, ensure that their conduct does not cause or contribute to harm, address risks identified as serious, and enable the realisation of all rights, including the right to health.

4. OVERCOMING THE PANDEMIC CRISIS IN THE REPUBLIC OF MOLDOVA

In practice, in the Republic of Moldova, things were a little different, given the fact that, according to the provisions of art. 4 para. (2) lit. g) from the Law on the Chamber of Commerce and Industry no. 393/1999: the attributions of establishing and confirming force majeure events in the relations between the subjects of entrepreneurial activity rest with the Chamber of Commerce and Industry. The current pandemic, however, highlighted the discrepancy between the provisions of various legislative acts regarding the issuance of certificates confirming force majeure.

Thus, through the Law on the modernization of the Civil Code and the modification of some legislative acts no. 133/2018, entered into force on March 1, 2019, the concept of "force majeure" was replaced by the concept of "justification due to an impediment". Despite the fact that the "old" norm, which regulates force majeure, and the "new" norm, which regulates justification due to an impediment, are based on the same hypothesis and provide for the same circumstances, the Chamber of Commerce and Industry refused to issue such certificates. The reason cited is that similar changes were not made in the Law of the Chamber of Commerce and Industry (Augenblick and Rousseau, 2012). Thus, if the notion of force majeure de jure does not exist, on 18.03.2020, the Chamber of Commerce and Industry notified the Parliament about the suspension of the issuance of the mentioned certificates. Given that several problems related to the proof of non-execution of contracts arose, art.4 of Law no. 393/1999 was subsequently amended in such a way that the Chamber of Commerce could resume issuing certificates starting from October 2020, when they were voted the legislative changes that are also valid for the mentioned law.

In the context of the aforementioned, it is important to note that non-performance is not justified if the debtor could reasonably have taken into account the impediment at the time of conclusion, if the obligation arose from a contract or other legal act. So the question arises: contracts concluded after March 17, 2020, can they still invoke the justifying impediment? Given that the seriousness of the situation was already known and the state's economic situation began to become precarious, most of the agreement areas were closed, the only ones operating normally being the grocery stores and pharmacies. So in that case, we consider that in the contracts concluded after March 17, 2020, the parties can no longer invoke the justifying impediment as a reason for non-execution or improper execution.

4.1. The effects of the pandemic times on consumers interests

With the declaration of the state of emergency in the context of the Covid-19 pandemic, both in the Republic of Moldova and abroad, each person as a consumer went through a series of changes in terms of their behavior and primary needs during this period. The restrictive measures that were imposed during the consumer pandemic, primarily by limiting physical interaction, caused an unprecedented economic crisis.

Thus there was an imposing drop in demand and supply on the market, changing the entire economic circuit in general, the main pandemic effects on human rights being identified primarily in general, as follows: The right to health, Freedom of movement, Workers' Rights (Fair, 2022).

A major trend among consumers was to reduce budgets for non-essential expenses, which soon became a permanent one for about a quarter of them, given that we did not manage to fully recover from the crisis caused by Covid-19, as we immediately entered an energy and economic crisis caused by the war in Ukraine, thus a large part of consumers have not returned to the usual consumption of the pre-covid period.

According to disaster psychology, the different psychological changes of residents caused by different emergency periods make purchasing behaviors exhibit distinctive characteristics, such as panic buying behaviors, impulse buying behaviors, compulsive buying behaviors, and online purchasing behaviors (Tao and Sun, 2022)

Another approach considers that some of the behaviors induced by COVID-19 that have been studied include consumption changes, which in addition to impulse buying and hoarding and panic buying, also include product and brand substitution and changes in channel preferences. Adaptations in people's purchasing behavior due to COVID-19 are consistent with existing literature that encompasses changes in consumer needs and preferences induced by environmental, social, biological, cognitive, and behavioral events (Das, Sarkar and Debroy, 2021). So some products that did not enjoy much demand on the

market, such as: masks, disposable gloves, antiseptics, which simply became indispensable to everyone, health being a priority for consumers, but also the legal norms required citizens to always be equipped as safely as possible, entry into closed spaces being prohibited without a mask.

Once safety and health became a priority, consumer purchasing patterns and preferences also changed quite rapidly. The pandemic has reshaped life as we know it now and accelerated several trends. One of the biggest of these trends is e-commerce. The increase in orders and home deliveries has led to unprecedented growth in online shopping. According to new data presented by IBM, the pandemic has accelerated the shift of consumers to e-commerce by five years.

Considering the fact that the pandemic has led to a rapid increase in consumer confidence in online shopping, and many companies have changed their business and invested more and more in this alternative way of buying, we still need to emphasize the importance of knowing your rights and consumer obligations in the online environment, as well as guaranteeing safety in this uncertain stage (Plotnic and Popescu, 2022).

The legal nature of the adhesion contract under the risk of contractual imbalance from the perspective of national and European legislation, proved to be a source of post-pandemic effects on the economic interests of consumers. Most of the time, the consumer concludes a contract without being able to discuss the content of the latter. Under these circumstances, one is tempted to say that freedom of contract is somewhat impaired even if the consumer remains free to contract or not. The risk is that an agreement containing clauses drawn up by a professional will be imposed on the consumer and these clauses can be the source of a contractual imbalance (Plotnic and Marian, 2020).

At this stage, it is legitimate to ask about the reasons for this imbalance. It appears that these reasons are primarily practical reasons that, under the guise of controlling counterparty risks, lead to a positional advantage. In classical contract theory, contractual equilibrium was the result of negotiation leading to a convergence between the opposing desires of the parties leading to consent. Regarding the price in particular, it was the haggling that allowed the balance on this price.

Within the European Community, the consumer is sufficiently protected by contract law both in the online and traditional environments. This protection is based, first of all, on private international law which guarantees, in most cases, the application of the legislation of the country of habitual residence of the consumer, also vis-à-vis third countries. Secondly, the E-Commerce Directive introduces a series of obligations for the service provider at the conclusion of the contract: that of providing certain information, that of confirming receipt of the order without undue delay and by electronic means, and finally, that of to provide the recipient of the service with adequate, efficient and accessible technical means that allow them to identify errors made when entering data and correct them before

placing an order. Thirdly, we should not forget the special protection offered to consumers by the Distance Contracts Directive (Plotnic and Praporscic, 2020). Thus we can conclude that even in the context of recent events, which depended on consumers and were absolutely unpredictable, the consumer is protected and his rights are safe.

4.2. The effects of the pandemic times on business environment

Business and life in general has always been full of uncertainties and risks. For decades, upheavals, disruptions and new global trends such as digitisation, technological transformation, geopolitical shifts, changing business models and shifting consensus around globalisation and trade have never ceased to disrupt the very notion of decision-making and business development.

However, the COVID-19 pandemic is changing, if it has not already changed, our collective understanding of uncertainty, as there is no event comparable to the COVID-19 crisis in the last century. We have had flu epidemics. We've had "Black Monday" and the 2008 financial crisis, and we've had localized threats and disasters that had regional or national consequences: Chernobyl, Iraq's invasion of Kuwait, the September 11, 2001 attacks (Jackson, 2021), Hurricane Katrina, etc. But the COVID-19 pandemic is unique: it is a truly global crisis and has deeper and more complex consequences and ramifications than any other crisis humanity has seen or experienced.

The Covid-19 pandemic had a very marked impact on the financial situation of companies around the world: they experienced a sudden drop in turnover, unprecedented in certain sectors, they had to reduce their taxes and borrow to -he respects his deadlines. At the same time, they enjoyed support from the state (Bauer, Hadjibeyli and Roulleau, 2021).

In order to position themselves correctly in the market in front of consumers, companies must first analyze how the pandemic period has influenced consumer preferences and then design their sales and marketing strategies in such a way as to meet customer preferences. At the same time, however, they must also pay attention to the tax implications arising in the process of product promotion. Both globally and in the Republic of Moldova, the priority of consumer goods producers is adapting to the changes that have recently occurred in consumer preferences. From the perspective of distribution channels, more and more companies believe that they need to continue the migration to online and ensure a pleasant experience in this environment as well compared to other sales channels. Many of the players who before the pandemic gave little importance to the development of this sales channel have allocated significant resources to match their competitors who started earlier (Malahov, 2021).

Thus, if there were no digital ways of doing business, most companies would have been paralyzed during the crisis. So, it is not surprising that entrepreneurs are currently planning to invest more in such enabling technologies as the cloud,

the Internet of Things, artificial intelligence and electronic payments, with most businesses increasing their budgets in this regard. The pandemic has moved everyday life, shopping and work online – not just for younger consumers, but for older people as well. It has also placed greater value on safe and durable products, a trend that most companies believe will continue in the near future. At the same time, the crisis has spurred demand for better product information and increased expectations of quick delivery.

The private sector in the Republic of Moldova was much more affected by the pandemic than in European countries in the same period, considering the fact that our country is a developing country, with an unstable economy, which was certainly not prepared for such challenge like the crisis caused by Covid-19.

On average, about 2 percent of Moldovan companies ceased their activity, which is half of the average reported in 37 other countries (Akhalkatsi, Jolevski and Rovo, 2021). where a survey was conducted similar. The industrial sector was less affected than the services sector. On the other hand, the labor market suffered significantly. The initial shock resulted in job losses of about 23 percent in May compared to the level recorded in January 2020. Although private sector employment subsequently experienced a moderate recovery, employment remained more than 10 percent below pre-crisis levels in November. Access to finance has become increasingly difficult for the private sector and, again, small companies - with cash shortages - faced the biggest challenges. According to data for November 2020, about 20 percent of surviving companies have applied for a loan since the outbreak of COVID-19, and over a third of these requests were rejected. Refusals were registered especially for small and medium-sized companies – about half of the applicants did not qualify for a loan.

Micro, small and medium-sized enterprises (SMEs) represent 71% of added value and employ 60% of the labor force in the economy of the Republic of Moldova, mainly in retail and wholesale trade, agriculture, manufacturing and construction. Most MSMEs have reported sales declines of up to 75-100 percent. Companies have experienced a decrease in demand for products and services, restrictions on their activities and disruption of supply (especially for imported materials). Companies expect to mitigate these challenges by reducing personnel costs (83%), reducing administrative expenses (75%), deferring strategic investments (83%) and reducing production (75%) (UNDP, 2021).

5. CONCLUSIONS

The COVID-19 pandemic has significantly affected the economic development of countries around the world, but it has also deepened existing problems. Consequently, the effects of the pandemic increased on the one hand, the need for economic transformation, modernization and qualitative development and on the other hand launched new technological reforms that led to the emergence of economic forms of business models, consumption, as well as

policies at the state or local government level. The effects of the pandemic are still visible in many aspects of life, including economic activity and the individual decisions of economic subjects at the level of households, businesses and governments.

With the online revolution enabled during the pandemic, the economic imbalance between the parties led to a disproportion that prohibited negotiations. Jurisprudence sought to avoid a too pronounced imbalance in accession contracts, especially through the inapplicability of onerous clauses, contrary to fundamental obligations, and especially of clauses limiting or excluding liability. On the other hand, it does not bring back a total possibility of negotiation, as it is limited by the requirements that tend towards the equality of the contractual conditions.

The contribution of this article can therefore be the identification and quantification of the aspects of the protection of human rights (consumers) and of the business environment in the Republic of Moldova, but also in the whole world, which have been affected by the pandemic. This can help focus the right measures, serving to mitigate the immediate but also long-term consequences of a future pandemic or force majeure within the confines of the national regulatory framework.

While companies will undoubtedly become more digital, they will also become more socially responsible as they strive to meet changing attitudes and the growing desire of customers and employees for a healthier and safer world. On the other hand, consumers are much more confident and informed, the pandemic making them increase their trust in the online environment, the regulation being one in some places laconic, especially in the Republic of Moldova, but the new rectifications make us believe that consumers in the post - covid are safe and much more prepared for a force majeure event than the 2020 pandemic found us.

We believe that more effective policies are needed to support companies during the recovery period and strengthen their resistance in the future, given the fact that the Republic of Moldova did not manage to recover from the Covid-19 crisis, as it was immediately influenced by the war in the neighboring country, which led the private sector into new uncertainty.

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